

Nicholas J. Henderson
nhenderson@portlaw.com
MOTSCHENBACHER & BLATTNER, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Telephone: (503) 417-0500
Facsimile: (503) 417-0501

Proposed Attorneys for Debtor
Earth Class Mail Corporation

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re
Earth Class Mail Corporation,
Debtor.

Case No. 15-30982-tmb11

DEBTOR'S MOTION FOR ORDERS (1) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS AND OTHER INTERESTS, (2) APPROVING SALE PROCEDURES, (3) APPROVING PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (4) DIRECTING APPOINTMENT OF CONSUMER PRIVACY OMBUDSMAN, (5) APPROVING PURCHASE AGREEMENT OR SUBSEQUENT OVERBID, (6) SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE, (7) ESTABLISHING THE FORM AND MANNER OF NOTICES RELATED THERETO, (8) AUTHORIZING INTERIM DISTRIBUTION FROM SALE PROCEEDS AND (9) REQUESTING WAIVER OF THE STAY UNDER BANKRUPTCY RULE 6004(F) AND 6006(D)

EXPEDITED HEARING REQUESTED

Earth Class Mail Corporation (the “Debtor”), as debtor in possession, hereby moves this Court for the entry of orders: (a) authorizing and scheduling an auction (the “Auction”) to sell substantially all assets of the Debtor (the “Purchased Assets”) free and clear of liens and other interests (the “Sale”); (b) establishing reasonable and necessary bidding procedures in connection with the Sale and the Auction (the “Sale Procedures”); (c) approving procedures for the assumption and assignment of executory contracts and unexpired leases (the “Assumption and Assignment Procedures”); (d) approving the Sale pursuant to (i) that certain Asset Purchase Agreement dated February 13, 2015, by and between the Debtor and Delivered.io, Inc. (the “Purchaser”), a copy of which, exclusive of the disclosure schedules, is attached hereto as Exhibit A (the “Agreement”) or (ii) a higher and better offer received at the Auction; (e) scheduling a final hearing to consider approval of the Sale (the “Sale Hearing”); (f) authorizing an interim distribution from the Sale proceeds; (g) waiving the stay under Bankruptcy Rule 6004(f) and 6006(d); and (h) establishing the form and manner of notices related thereto. In support of this motion, the Debtor represents:

Background

1. On February 27, 2015 (the “Petition Date”), the Debtor filed herein a voluntary petition under Chapter 11 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been requested or appointed and no official committee of creditors has been appointed.

2. The Debtor is a Oregon corporation headquartered in Beaverton, Oregon that is engaged in the business of providing online postal mail management services.

3. On or about February 13, 2015, following significant efforts to locate a potential purchaser for the Debtor’s business, the Debtor negotiated the terms for the sale of substantially all of the Debtor’s assets and executed the Agreement with Purchaser. As more fully explained below, prior to the Petition Date, the Debtor’s investment banker had approached a number of potential purchasers of the Debtor’s business and its assets. While a few potential purchasers

expressed some interest, the only person or entity that ultimately decided to provide a formal proposal to purchase the Debtor's assets was the Purchaser. The Debtor has also been unable to obtain additional investment in the Debtor due to the Debtor's significant insolvency and secured debt load.

Jurisdiction

4. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334 and LR 2100.1. Consideration of this motion constitutes a core proceeding within the meaning of 28 USC § 157(b)(2). The statutory predicates for the relief sought by this motion are sections 105, 363 and 365 of the Bankruptcy Code. This motion is also governed by Bankruptcy Rules 2002, 6004, 6006 and 9007 and LBR 2002-1 and LBR 363. Venue is proper under 28 USC § 1408.

Relief Requested

5. By this motion, the Debtor seeks entry of: (i) an order in the form attached hereto as Exhibit B (the "Sale Procedures Order") that will, among other things, establish rules by which prospective bidders can qualify to participate at the Auction, schedule the date and time of the Auction, establish rules to govern the Auction, schedule the Sale Hearing, approve the Purchaser's right to receive a break-up fee of 3% of the purchase price (the "Break-up Fee") from the successful bidder with three days of the entry of the Sale Order in the event there is a successful overbid and Purchaser is not the successful Purchaser at the Auction, authorize and approve procedures (the "Assumption and Assignment Procedures") for the assumption and assignment of executory contracts and unexpired leases designated by the successful bidder at the Auction, and approve notice procedures relating to the Sale; and (ii) an order in the form attached hereto as Exhibit C (the "Sale Order") approving the Sale to the Purchaser or, if an Auction is conducted, to the successful bidder at the Auction. The Debtor requests that the Court hold an expedited hearing on this motion for the purposes of considering and acting on this motion to the extent it seeks entry of the Sale Procedures Order.

Motschenbacher & Blattner, LLP
 117 SW Taylor Street, Suite 200
 Portland, OR 97204
 Phone: (503) 417-0500
 Fax: (503) 417-0501

Summary and Highlighting of Material Terms of Agreement¹

6. The following is a summary of the terms of the sale transaction contemplated by the Agreement, including provisions required to be highlighted in accordance with local rules and guidelines:

Purchase Price As more particularly described in Section 2.1 of the Agreement, the Purchase Price is \$5,000,000, plus or minus the amount by which Debtor's Closing Working Capital exceeds or is less than \$500,000, plus the amount of the Reimbursement for Costs described in Section 11.1 of the Agreement, and as explained below. The specific formulae for adjustment to the Purchase Price as set forth in section 2.2 of the Agreement.

The Purchase Price will be payable as follows: (i) \$150,000 as a deposit against the Purchase Price (or to be returned to the Purchaser if it is not the successful purchaser) (the "Deposit") to be paid into escrow as a deposit; (ii) \$350,000, subject to adjustment, in cash at Closing to be held in escrow along with the \$150,000 deposit, to satisfy any claims for Damages (as defined in section 12.3 of the Agreement) to Purchaser ("Escrow Deposit"); (iii) \$4,500,000, subject to adjustment, in cash at Closing ("Closing Cash Consideration"); and (iv) the an amount to cover certain costs and expenses incurred by Debtor and Ignition Ventures Management, LLC ("Ignition") in connection with the Agreement as provided in Section 11.1 of the Agreement ("Reimbursement for Costs").

The Purchaser is also assuming (i) certain Assumed Liabilities as set forth in Section 1.4 of the Agreement, and (ii) certain Assumed Leases and Assumed Contracts (the "Material Agreements") as set forth in Section 1.5 of the Agreement, provided that the Debtor shall pay all costs required to cure the Material Agreements (the "Cure Costs").

Assets to be Acquired The Purchased Assets as defined in 1.2 of the Agreement, which is substantially all of the Debtor's assets.

Excluded Assets The "Excluded Assets" as defined in Section 1.3 of the Agreement, including the Debtor's corporate records, insurance policies, rights under the Agreement, and Excluded Contracts

¹ The description of the Agreement contained in this motion is a summary only and should not be construed as modifying or limiting the terms of the Purchase Agreement. In the event of a conflict between the description in this motion and the Purchase Agreement, the provisions of the Purchase Agreement shall govern. Capitalized terms used but not defined herein have the meaning ascribed to them in the Purchase Agreement.

Motschenbacher & Blattner, LLP

117 SW Taylor Street, Suite 200

Portland, OR 97204

Phone: (503) 417-0500

Fax: (503) 417-0501

1	Assumed Liabilities	Only those Assumed Liabilities expressly listed in Section
2		1.4 of the Agreement.
3	Excluded Liabilities:	All liabilities other than those expressly identified as
4		Assumed Liabilities in the Agreement.
5	Assumption and Assignment of Executory Contracts	Purchaser will assume the Material Agreements described in
6		Section 1.5 of the Agreement. However, Debtor will pay all
7		Cure Costs, as defined in section 8.6 of the Agreement, with
8		respect to the Material Agreements.
9	Closing Conditions	The parties' conditions for closing are set forth in Articles 9
10		and 10 of the Agreement. Such conditions include the entry
11		of the Sale Order, the accuracy of representations and
12		warranties, the absence of any occurrence or circumstance
13		that has or is reasonably likely to have a Material Adverse
14		Effect, as defined in the Agreement. There is no financing
15		contingency for the Purchaser's obligation to close the Sale.
16	Expense Reimbursement	Each party shall pay and be solely responsible for the costs
17		and expenses of its respective counsel and the other costs and
18		fees incurred by such party in connection with negotiating
19		and closing the transactions contemplated by this Agreement;
20		provided, however, that upon Closing (if and only if the
21		Closing occurs), as stated in Section 11.1 of the Agreement,
22		Purchaser shall pay to Debtor the lesser of (a) \$150,000 or (b)
23		one-half of the aggregate expenses incurred by Debtor and
24		Ignition in connection with the Agreement and the
25		transactions contemplated thereby. In the interest of full
26		disclosure, Ignition is not only the collateral agent for the
		holders of certain secured debts against the Debtor; Ignition
		is also a preferred stock holder.
	Sale to Insider:	Purchaser is not an insider as defined in Bankruptcy Code §
		101(31).
	Sale Free and Clear:	The sale will be free and clear of Liens and Liabilities, each
		as defined in the Agreement. The parties with such Liens and
		Liabilities and the nature of those interests are set forth
		below.
	Liens:	There are seven secured creditors, as follows: (1) Comerica
		Bank; (2) Ignition Venture Partners III, LP; (3) Ignition
		Managing Directors Fund III, LLC; (4) Washington Park
		Ventures, LLC; (5) Evergone Investments; (6) Robert R.
		McIntyre 2003 Trust; and (7) Lauren D. Rachlin
		(collectively, the "Secured Creditors"). The estimated total
		of amounts owed on the liens is \$8,458,228.80. The sale is
		permitted pursuant to § 363(f)(2), as the Secured Creditors
		consent to the sale.

1
2 Agreements with Management;
3 Releases and Insider Benefits:

Purchaser is released from any potential liability in connection with the purchase of the Purchased Assets, other than the Permitted Liens and Assumed Liabilities as defined in Section 1.4 of the Agreement.

4
5 Purchaser has agreed to assume Debtor's employment
6 agreements with James Wilson, president and chief
7 operations officer, dated 9/24/2014, and Stacey Lee,
8 secretary and chief financial officer, dated 9/24/2014.

9 Additionally, pursuant to Section 8.4 of the Agreement,
10 Purchaser shall offer employment to all of Debtor's
11 employees, on terms no less favorable in any material respect
12 to the terms currently in effect with respect to such
13 employees. This includes the Debtor's current officers.

14 Finally, the Debtor has entered into a Management
15 Carve-Out Plan with certain officers and key employees,
16 which will result in the payment of bonuses to these
17 individuals upon the closing of the proposed Sale. Debtor's
18 Board adopted the bonus plan to provide an incentive to
19 certain officers, directors, employees and consultants to
20 contribute to the performance of the Debtor's business prior
21 to any sale of the business. Debtor believes this bonus plan
22 was necessary to retain key individuals and maximize the
23 going concern value of the Debtor. As discussed below, the
24 seeks an order of the Court regarding distribution of the Sale
25 proceeds, including payment of the bonus plan to
26 management and key employees. The Management
Carve-Out Plans are attached hereto as Exhibit D.

27 Closing Deadlines and
28 Contingencies:

As set forth in Section 13.1(b) of the Agreement, the Sale must close within 90 days of the Petition Date, or **May 28, 2015**. The obligations of Debtor and Purchaser under the Agreement are conditioned on approval of the Sale by this Court, and various other conditions set forth in Articles 7 through 10 of the Agreement, including approval of the Sale Order attached hereto as Exhibit C. There are no financing contingencies for Purchaser's obligation to close.

29 Good Faith Deposit:

Purchaser has paid a refundable deposit of \$150,000 as a good faith deposit. As set forth in the Sale Procedures attached as Exhibit 1 to the Sale Procedures Order, all competing bidders will be required to pay a similar good faith deposit.

30 Interim Agreement With Proposed
31 Buyer: None.

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

1	Use of Proceeds:	As set forth in the proposed Sale Order, Debtor requests an interim distribution to the Secured Creditors and the Debtor's executives and employees under the Management Carve-Out Plans with such individuals. Debtor will seek a separate final distribution order authorizing the disbursement of proceeds from the Sale to unsecured creditors.
2		
3		
4	Record Retention:	After the sale, Debtor will have reasonable access to the books and records as necessary to administer the Chapter 11 case and file final returns, as appropriate.
5		
6	Sale of Avoidance Actions:	The sale does not include the sale of any avoidance claims under Chapter 5 of the Bankruptcy Code.
7		
8	Requested Findings as to Successor Liability:	Purchaser will not be deemed, as a result of any action taken in connection with the Agreement, to (i) be the successor of Debtor, (ii) have, de facto or otherwise, merged with or into Debtor, (iii) be a consolidation, mere continuation or substantial continuation of Debtor or the enterprise of Debtor, (iv) be a continuation of the Debtor or the estate's business or (v) be responsible for any liability of Debtor or for payment of any benefit accruing to Debtor.
9		
10		
11		
12	Credit Bidding:	The motion does not seek to limit credit bidding under § 363.
13		
14	Standard for Approval:	The motion seeks approval of the proposed sale pursuant to the business judgment standard and best interests of the estate standard.
15		
16	Relief from Bankruptcy Rule 6004(h):	This motion requests relief from Bankruptcy Rule 6004(h) to protect the value of the Purchased Assets, and to ensure that the estate will not continue to be depleted by ongoing operations.
17		
18	Solicitation Process:	Notice of the proposed sale will be given to all parties and creditors in interest, and other parties as set forth in the certificate of service.
19		

Highlighting of the Proposed Sale Procedures

7. The proposed Sale Procedures are intended to permit a fair and efficient competitive sale consistent with the time line of this Chapter 11 case and promptly identify any alternative bid that is higher or otherwise better than the bid set forth in the Agreement. Because the Sale Procedures (the "Sale Procedures" or "Sale Proc.") are attached as **Exhibit 1** to proposed Sale Procedures Order, they are not restated herein. Generally speaking, however, the Sale Procedures establish the following, among other things:

- The deadlines and requirements for becoming an Acceptable Bidder, submitting competing bids and the method and criteria by which such competing bids are to become entitled to be Qualified Bids sufficient to trigger an Auction, including the minimum consideration that must be provided and the terms and conditions that must be satisfied by any Bidder (other than Purchaser) to be entitled to be an Acceptable Bidder and a Qualified Bidder (See Sale Proc. at ¶¶ B, D).
- The manner in which Qualified Bids will be evaluated by Debtor to determine the Starting Bid for the Auction (Sale Proc. at ¶ E).
- The procedures for conducting the Auction, if any (See Sale Proc. at ¶ G).
- The criteria by which the “Successful Bidder” will be selected by Debtor, in consultation with its advisors (See Sale Proc. at ¶ H).
- Various other matters relating to the sale process generally, including the Sale Hearing, designation of a Back-Up Bidder, and certain reservations of rights (See Sale Proc. at ¶¶ I-K).

8. The Sale Procedures recognize Debtor's fiduciary obligations to maximize sale value, and, as such, do not impair Debtor's ability to consider all qualified bid proposals, and preserve Debtor's right to modify the Sale Procedures as necessary or appropriate to maximize value for Debtor's estate in consultation with key parties set forth therein.

9. The Sale Procedures contain the following provisions that are required to be highlighted pursuant to local rules and guidelines:

- (a) Provisions Governing Qualifications of Bidders. The provisions governing an entity's right to become an Acceptable Bidder are set forth in paragraphs B and D of the Sale Procedures. These include the requirement that Acceptable Bidders must deposit \$150,000 in cash, which will be returned to each party that is not the Successful Bidder.
- (b) Provisions Governing Qualified Bids. The provisions governing Qualified Bids are set forth in paragraphs D and E of the Sale Procedures. Such provisions include, among other things, the deadlines for submitting a bid, the requirements for submitting a bid, the assets to be included in the bid and the period the bid must remain open. Qualified Bids are required to include a marked-up version of the Agreement, to show amendments or modifications to the Agreement. Purchaser is deemed to have satisfied all of the bidding conditions.

- (c) Bid Protections to Purchaser as Stalking Horse Bidder. The Agreement does not include any limitations on Debtor's ability to solicit higher or better bids. Paragraph D(3) of the Sale Procedures sets forth minimum bidding increments of \$50,000, and also sets the Minimum Initial Overbid Amount. The Minimum Initial Overbid Amount is set at \$5,200,000, which is equal to the \$5,000,000 Purchase Price, plus the Break-Up Fee, plus the \$50,000 bidding increment. The Agreement provides that if Purchaser is not, for any reason, the Successful Bidder, Purchaser will be entitled to a cash payment from the Successful Bidder in an amount equal to the Break-up Fee, which shall be in addition to the amount of the purchase price to be paid by the Successful Bidder. Purchaser shall also be entitled to a return of the Deposit. The Successful Bidder shall pay the Break-Up Fee within three days after entry of the Sale Order, and the Debtor shall promptly file a motion requesting an order directing the Purchaser's counsel to return the Deposit to Purchaser. The provisions governing the Break-Up Fee to Purchaser are set forth in Exhibit 1 to the Sale Procedures Order. The basis for the Break-Up Fee is discussed below.
- (d) Due Diligence Period. Interested parties shall have until _____, 2015 (the "Bid Deadline") to conduct due diligence. Paragraphs B and C of the Sale Procedures sets forth the requirements for obtaining due diligence access.
- (e) Modification of Bidding and Auction Procedures. Paragraph K of the Sale Procedures describes the Debtor's reservation of the right to modify the Sale Procedures without further order of the Court.
- (f) Closing with Alternative Backup Bidders. Paragraph J of the Sale Procedures addresses the ability of Debtor to sell the Purchased Assets to the Back-Up Bidder.
- (g) Provisions Governing the Auction. Paragraph G of the Sale Procedures sets forth the provisions governing the auction, and this Motion specifies the date, time and place at which the Auction will be conducted and the method for providing notice to parties of any changes thereto. Further, Paragraph D(1) of the Sale Procedures requires each bidder to identify whether it is bidding for itself or others and if for others, the identities of such parties and whether the bidder is party to any agreement limiting the bidders at the auction.

Proposed Assumption and Assignment Procedures

10. The following is a summary of the proposed Assumption and Assignment Procedures:

- (a) Debtor is also seeking approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Material Agreements pursuant to the procedures set

1 forth in section 1.5 of the Agreement. Among other things, Debtor will first pay all Cure Costs and
 2 timely provide Purchaser with the information required in section 1.5(c) and elsewhere in the
 3 Agreement.

4 (b) The effective date on which the Purchaser seeks to have the assumption and
 5 assignment of the Material Agreements become effective will be the Closing Date pursuant to the
 6 terms of the Agreement (the “Proposed Assumption Effective Date”).

7 (c) By the date to be fixed by the Court in the Sale Procedures Order, the
 8 Debtor will provide notice (the “Assumption and Assignment Notice”) to each non-debtor
 9 counterparty to a Material Agreement that Purchaser designates for assumption and assignment,
 10 substantially in the form attached to the Sale Procedures Order as Exhibit 3, that (i) identifies the
 11 proposed amount to be paid to such counterparty to cure all defaults under such agreement that are
 12 required to be cured pursuant to section 365 of the Bankruptcy Code as a prerequisite to
 13 assumption (together with the timing of such payments, if any), and (ii) describes the procedures
 14 for objecting to the proposed assumption and assignment of the agreement.

15 (d) Purchaser’s promise to perform from and after the Closing Date with
 16 respect to the Material Agreements shall be the only adequate assurance of future performance
 17 provided to satisfy the requirements of section 365 of the Bankruptcy Code.

18 (e) Objections, if any, to the proposed assumption and assignment of any
 19 Material Agreements to Purchaser must be made in writing and filed with the Court no later than a
 20 date to be fixed by the Court in the Sale Procedures Order (the “Objection Deadline”).

21 (f) Any counterparty to a Material Agreement proposed to be assumed and
 22 assigned that does not timely file and serve an objection to assignment (a “Contract Objection”)
 23 before the Objection Deadline will be deemed to have consented to the assumption and assignment
 24 of its Material Agreement to Purchaser and the cure of existing defaults and shall be forever barred
 25 from objecting to the cure and from asserting any additional cure or other amounts against the
 26

1 Debtor or Purchaser. In that event, the Debtor and Purchaser may provide in the Sale Order for the
 2 assumption and assignment of the applicable Material Agreement to Purchaser (or other
 3 Successful Bidder) and for payment of the cure amount, if any, specified in the Assumption and
 4 Assignment Notice, all without further notice to that counterparty.

5 (g) If Qualified Alternative Bids are received by the Debtor, and Purchaser is
 6 not the Successful Bidder at the Auction, the Debtor will provide an amended Assumption and
 7 Assignment Notice to each non-Debtor counterparty to an Assumed Contract or Assumed Lease
 8 designated by the Successful Bidder for assumption and assignment, identifying the Successful
 9 Bidder, and providing information to the non-debtor counterparties regarding the ability of the
 10 Successful Bidder to provide adequate assurance of future performance as required by section 365
 11 of the Bankruptcy Code. Objections, if any, to the proposed assumption and assignment of any
 12 Assumed Contract or Assumed Lease to a Successful Bidder (other than Purchaser) must be made
 13 in writing and filed with the Court on a date to be fixed by the Court at the Sale Hearing.

14 (h) If a timely Contract Objection is filed by the Objection Deadline and such
 15 objection cannot otherwise be resolved by the parties, the Bankruptcy Court may hear such
 16 objection at the Sale Hearing, or any adjourned date thereof.

17 (i) Each Material Agreement will be assumed and assigned to Purchaser or the
 18 Successful Bidder (as applicable) on the date (the "Assumption Effective Date") that is the later of
 19 (i) the Proposed Assumption Effective Date, and (ii) the Assumption Resolution Date (as defined
 20 below). The "Assumption Resolution Date" shall be, (i) if no Contract Objection has been filed on
 21 or prior to the Contract Objection Deadline, the business day after the Contract Objection
 22 Deadline, or (ii) if a Contract Objection has been filed on or prior to the Contract Objection
 23 Deadline, the date of the Assumption Resolution Stipulation or the date of a Court order
 24 authorizing the assumption and assignment to Purchaser or the Successful Bidder (as applicable)
 25
 26

1 of the Assumed Contract or Assumed Lease. If Purchaser is the Successful Bidder, the
 2 Assumption Effective Date shall not be later than the Closing Date.

3 **Points and Authorities**

4 A. Sale of Substantially All Assets Under Section 363

5 11. Section 363 of the Bankruptcy Code provides authority for a debtor in possession
 6 “after notice and a hearing, [to] use, sell or lease, other than in the ordinary course of business,
 7 property of the estate.” 11 USC § 363(b)(1). This provision generally allows a debtor in
 8 possession (subject to court approval) to sell property of the estate outside the ordinary course of
 9 business where the proposed sale is a sound exercise of the debtor’s business judgment and when
 10 the sale is proposed in good faith and for fair value. *See Committee of Equity Security Holders v.*
 11 *Lionel Corporation (In re Lionel Corp.)*, 722 F2d 1063, 1070 (2d Cir 1983); *In re Ernst Home Ctr.,*
 12 *Inc.*, 209 BR 974, 980 (Bankr WD Wash 1997). When a trustee or debtor articulates a reasonable
 13 basis for its business decisions, the “court will generally not entertain objections to the debtor’s
 14 conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville*
 15 *Corp.)*, 60 BR 612, 616 (Bankr SDNY 1986).

16 12. The authority to sell assets conferred upon a debtor in possession by section 363(b)
 17 “include[s] a sale of substantially all the assets of an estate.” *Otto Preminger Films, Ltd. v. Qintex*
 18 *Entm’t, Inc. (In re Qintex Entm’t, Inc.)*, 950 F2d 1492, 1495 (9th Cir 1991). Further, section
 19 105(a) allows the court to “issue any order, process or judgment that is necessary or appropriate to
 20 carry out the provisions of this title.”

21 13. A bankruptcy court’s power to authorize a sale under section 363(b) is to be
 22 exercised at the court’s discretion. *In re WPRV-TV*, 983 F2d 336, 340 (1st Cir 1993); *New Haven*
 23 *Radio, Inc. v Meister (In re Martin-Trigona)*, 760 F2d 1334, 1346 (2d Cir 1985); *Lionel*, 722 F2d
 24 at 1069; *Stephens Indus., Inc. v McClung*, 789 F2d 386, 390-91 (6th Cir 1986).

Motschenbacher & Blattner, LLP
 117 SW Taylor Street, Suite 200
 Portland, OR 97204
 Phone: (503) 417-0500
 Fax: (503) 417-0501

1 14. Courts within the Ninth Circuit have authorized a sale of all or substantially all of a
 2 debtor's assets pursuant to section 363 when there is a good business reason for so doing. *See, e.g.,*
 3 *In re Am. Dev. Corp.*, 95 BR 735, 739 (Bankr CD Cal 1989) (among the factors that determines
 4 whether a good business reason exists is whether the sale is in the best interests of the estate's
 5 creditors); *In re Photocopy & Supply, Inc.*, 1994 WL 553065 at 1 (Bankr. D. Idaho 1994) (a sale of
 6 substantially all of the debtor's assets was authorized, in the absence of a reorganization plan, when
 7 justified by a good business reason); *see also In re Martin*, 91 F3d 395 (3d Cir 1996); *Lionel*, 722
 8 F2d at 1071; *In re Titusville Country Club*, 128 BR 396 (Bankr WD Pa 1991).

9 15. Courts have also required that the debtor provide reasonable and adequate notice of
 10 the sale, that the sale price be fair and reasonable, and that the sale be the result of good faith
 11 negotiations with the Purchaser. *See, e.g., In re Ewell*, 958 F2d 276 (9th Cir 1992) (declining to set
 12 aside or modify a sale pursuant to 11 USC § 363 because the price was fair and reasonable and the
 13 Purchaser was a good faith purchaser pursuant to 11 USC § 363(m)); *In re King-Wilson*, 1998 US
 14 Dist LEXIS 16595 at *11-12 (ND Cal Oct. 13, 1998); *In re Canyon P'ship*, 55 BR 520 (Bankr SD
 15 Cal 1985); *see also In re Abbotts Dairies of Pa.*, 788 F2d 143, 147-50 (3d Cir 1986); *In re Tempo*
 16 *Tech. Corp.*, 202 BR 363, 367 (D Del 1996), *aff'd sub nom. Diamond Abrasives Corp. v.*
 17 *Temtechco, Inc. (In re Temtechco, Inc.)*, 141 F3d 1155 (3d Cir 1998).

18 16. In *Lionel*, the Second Circuit Court of Appeals held that the standard for the proper
 19 exercise of the debtor's discretion is a good business reason. *Id.* at 1071. The court adopted, in
 20 part, the following criteria for evaluating whether a good business reason exists for authorizing a
 21 sale of substantially all of the assets of a debtor:

- 22 (1) The proportionate value of the asset to the estate as a whole;
- 23 (2) The amount of elapsed time since the filing of the petition;
- 24 (3) The likelihood that a plan will be proposed and confirmed in the near future;
- 25 (4) The effect of the proposed disposition on future plans of reorganization; and
- 26

(5) Most importantly, whether the assets to be sold are decreasing or increasing in value.

17. The Debtor respectfully submits that the proposed sale of substantially all of the Debtor's assets as set forth herein is entirely consistent with the guidelines set forth in *Lionel* and applicable law. A prompt sale will maximize the amount that the Debtor, its estate and its creditors may realize for the value of the assets. The terms and conditions of the Auction and the Sale Procedures are fair and reasonable and in the best interest of the Debtor, its creditors, and the estate. The proposed sale should, therefore, be approved.

18. Moreover, the Agreement is the product of substantial good faith, arms'-length negotiations between the Debtor and Purchaser. The price and the form and structure of the proposed sale will be tested in the marketplace. The Sale Procedures provide certain protections to Purchaser while maximizing the opportunity for competing bids. Thus, the Debtor is confident that the winning bid that emerges from this process will be the highest and best bid obtainable for the Purchased Assets in the circumstances.

19. One of the more important factors to be considered in a sale of substantially all of the assets of a debtor under section 363(b) is whether the value of the debtor's assets will decline. *In re Lionel Corp.*, 722 F.2d 1063, 1071. Such consideration is often dispositive. *In re Boogaart of Florida, Inc.*, 17 BR 480, 483-84 (Bankr SD Fla 1981) ("Where . . . the value of the assets is rapidly decreasing and the estates are suffering continuing losses, liquidation of assets prior to the proposal and confirmation of plans of reorganization may be desirable because it will ultimately increase the amounts distributed to creditors after plans are confirmed.").

20. In this case, the Debtor's assets would rapidly become a "melting ice cube" but for the patience of the Secured Creditors and certain unsecured creditors. Debtor's existing cash flow does not satisfy its debt service requirements. Debtor's cash flow has been consistent for years, and Debtor's business has been ongoing only because certain secured noteholders have refrained

1 from exercising their rights caused by Debtor's default of its obligations to such creditors. The
 2 Debtor's cash flow will not increase without substantial additional capital investment, and Debtor
 3 has found that it is impossible to raise additional capital with its current equity and debt structure.

4 21. Delaying a sale could seriously jeopardize the value of the Debtor's business assets.
 5 The existing value of the Debtor's business assets is directly related to the continued used of
 6 Debtor's services by its customers, none of which have any long-term contracts. Debtor provides
 7 online mail management services, and customers relying on these services to receive their mail are
 8 acutely aware of service disruptions and delays. In order to preserve its customer base and the
 9 value of its business assets, the Debtor must continue to operate its business in an orderly manner
 10 throughout the sale process to ensure that employee and customer impacts are kept to a minimum,
 11 something that will increase in difficulty if the business is subject to a protracted sale process and
 12 bankruptcy proceeding. Service disruptions caused by a manner of liquidation or sale that results
 13 in increased customer impacts than would be achieved through the sale of substantially all of the
 14 assets of the business will result in a substantial loss to the customer base and value of the Debtor's
 15 estate.

16 22. A prompt sale, as opposed to a sale pursuant to a plan of liquidation or
 17 reorganization, will provide the greatest value to creditors.

18 B. Sale Free and Clear of Liens and Other Interests

19 23. The Debtor requests authorization to sell the Purchased Assets free and clear of all
 20 liens and other interests. Section 363(f) of the Bankruptcy Code authorizes a debtor in possession
 21 to sell property "free and clear of any interest in such property of an entity other than the estate" if
 22 one or more of the following conditions is satisfied:

- 23 (1) applicable nonbankruptcy law permits the sale of such property free and
 24 clear of such interest;
 25 (2) such entity consents;
 26

- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 USC § 363(f). Consistent with the use of the term elsewhere in the Bankruptcy Code, courts construe the term “interest” broadly to include all legal and equitable interests in the property and arising from the property. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003) (“interests” is read expansively to include obligations that may flow from ownership of the property).

24. Applicable case law provides that a sale of a debtor’s assets free and clear of liens, interests and encumbrances, with such liens, interests and encumbrances attaching to the net proceeds of the sale, is permissible under section 363(f). *See, e.g., In re Goffena*, 175 BR 386, 387 (Bankr D Mont 1994); *In re Granite Lumber Co.*, 63 BR 466, 471 (Bankr D Mont 1986); *see also Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F3d 252, 259 (3d Cir 2000) (“[T]he holdings of the courts suggest that any interest in property that can be reduced to a money satisfaction constitutes a claim for purposes of § 363(f) and, therefore, attaches to the proceeds of the sale.”); *In re Elliot*, 94 BR 343, 345 (ED Pa 1988).

25. One or more of the conditions set forth in section 363(f) are satisfied here with regard to each of the security interests of the Debtor’s prepetition creditors. *See In re Jolan, Inc.*, 403 B.R. 866, 869-70 (Bankr. W.D. Wash. 2009); *see also* Memorandum Regarding Sale, *In re Wrangell Seafoods, Inc.*, No. 09-00012 (Bankr. D. Alaska Mar. 9, 2009). In addition, the absence of an objection by holders of interests in the assets to be sold can constitute consent to the sale free and clear of such claims and interests, satisfying section 363(f)(2). *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (in a sale conducted pursuant to section 363 of

the Bankruptcy Code, “lack of objection (provided of course there is notice) counts as consent.”); *In re Tabone, Inc.*, 175 BR 855, 858 (Bankr D.N.J. 1994); *Veltman v. Whetzal*, 93 F3d 517 (8th Cir 1996). The Secured Creditors affirmatively consent to the proposed Sale.

C. Sale in Good Faith

26. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) and (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 USC § 363(m).

27. While the Bankruptcy Code does not define “good faith,” the Ninth Circuit has held that:

For purposes of § 363(m), a “good faith purchaser” is one who buys “in good faith” and “for value.” This court has said that lack of good faith is shown by “fraud, collusion between the purchaser and the trustee, or an attempt to take grossly unfair advantage of other bidders.”

In re Serzow, 1994 US App LEXIS 16392, at *4-6 (9th Cir June 28, 1994) (citations omitted); *In re Ewell*, 958 F2d 276, 281 (9th Cir 1992).

28. The Debtor submits, and if necessary will present additional evidence at the Sale Hearing showing, that the negotiation of the Agreement was conducted in a fair manner, and that due to the open and competitive nature of the Auction, the Agreement or any purchase agreement finalized by another Successful Bidder will, by definition, be the result of arms’-length negotiations in good faith, and the Successful Bidder is entitled to all the benefits of section 363(m).

1 D. The Expense Reimbursement

2 29. The Agreement provides that, in the event Purchaser is not the Successful Bidder,
 3 the Successful Bidder shall pay to the Purchaser, within three days following the entry of the Sale
 4 Order, the Break-up Fee, if the Successful Bidder is not the Purchaser. “Stalking horse”
 5 purchasers in asset sales often seek break-up fees or other forms of protection in the event they are
 6 not the successful purchasers, and courts have often approved such incentives, deferring to
 7 debtors’ business judgment that such incentives are necessary in order to induce the initial bidder
 8 to step forward. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 BR 24, 28 (Bankr SDNY 1989)
 9 (holding that bidding incentives may be necessary to “convince a white knight to enter the bidding
 10 by providing some form of compensation for the risks it is undertaking”) (citation omitted). Even
 11 courts that have rejected the “business judgment” test for evaluating break-up fees as a bidding
 12 incentive have indicated that bidding incentives would be appropriate where they provide a benefit
 13 to the debtor’s estate. *See, e.g., In re O’Brien Envtl. Energy, Inc.*, 181 F3d 527, 533 (3d Cir 1999)
 14 (stating that bidding incentives benefit the estate where they (i) promote “more competitive
 15 bidding, such as by inducing a bid that otherwise would not have been made and without which
 16 bidding would have been limited,” or (ii) induce a bidder to submit a bid that serves as a “floor bid”
 17 on which other bidders can rely).

18 30. The Debtor submits that the Break-up Fee is reasonable and appropriate in the
 19 circumstances of this case. Given its modest amount and the material benefits which will inure to
 20 the estate and creditors as the result of a going concern sale (as opposed to a liquidation) –
 21 including the establishment of a floor price for the assets to be sold – the Debtor submits that the
 22 expense reimbursement should be approved.

23 E. Assumption and Assignment of Executory Contracts and Unexpired Leases

24 31. As set forth above, the Agreement provides for Purchaser or other Successful
 25 Bidder to request that the Debtor assume and assign certain contracts and leases. The Bankruptcy
 26

Code authorizes a debtor in possession to assume or reject an executory contract or unexpired lease, subject to bankruptcy court approval, providing that:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 USC § 365(a), (b)(1).

32. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical pragmatic construction.” *See, e.g., In re Great Nw. Recreation Ctr., Inc.*, 74 BR 846 (Bankr D Mont 1987); *see also Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 BR 524, 538 (Bankr D NJ 1988); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 BR 789, 803 (Bankr ND Ill 1985) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Purchaser’s promise to perform from and after the Closing Date with respect to Assumed Contracts and Assumed Leases constitutes adequate assurance of future performance in satisfaction of the requirements of section 365 of the Bankruptcy Code.

33. The standard that is applied in the Ninth Circuit for determining whether an executory contract or unexpired lease should be assumed is the debtor’s “business judgment” that the assumption is in its economic best interests. *See In re GI Indus., Inc.*, 204 F3d 1276, 1282 (9th Cir 2000) (“a bankruptcy court applies the business judgment rule to evaluate a trustee’s rejection decision”); *see also Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F2d 36, 40 (3d Cir 1989); *In re III Enters., Inc. V*, 163 BR 453, 469 (Bankr ED Pa 1994) (“Generally, a court will give great deference to a debtor’s decision to assume or reject a contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound

Motschenbacher & Blattner, LLP

117 SW Taylor Street, Suite 200

Portland, OR 97204

Phone: (503) 417-0500

Fax: (503) 417-0501

1 business judgment- a standard which we have concluded many times is not difficult to meet.”)
 2 (citations omitted). *Cf Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med.*
 3 *Group, Inc.)*, 476 F3d 665 (9th Cir 2007) (DIP’s rejection of contract was permitted unless based on
 4 bad faith, whim or caprice, or on unreasonable strategy).

5 34. Under the Agreement, the Debtor will be responsible for any and all cure costs that
 6 are required to be paid under section 365 as a condition of the assumption and assignment of the
 7 contacts and leases designated by Purchaser.

8 F. Appointment of a Consumer Privacy Ombudsman

9 35. It may be the case that the Debtor has disclosed to its customers a policy prohibiting
 10 the transfer of personally identifiable information about individuals to persons that are not
 11 affiliated with the Debtor and that such a policy was in effect on the Petition Date. Accordingly, in
 12 accordance with Bankruptcy Rule 6004(g)(1), the Debtor is requesting herein that the Court enter
 13 an order directing the United States trustee to appoint a consumer privacy ombudsman under
 14 section 322 so that the Court will be able to make the findings required by section 363(b)(1)(A) or
 15 (B) at the Sale Hearing.

16 G. Relief Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

17 36. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease
 18 of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court
 19 orders otherwise.” Bankruptcy Rule 6006(d) similarly provides that an “order authorizing the
 20 trustee to assign an executory contract or unexpired lease under§ 365(f) is stayed until the
 21 expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtor
 22 requests that any order authorizing it to sell the Purchased Assets and to assign the Material
 23 Agreements be effective immediately by providing that the 14-day stay of Bankruptcy Rules
 24 6004(h) and 6006(d) will not apply.
 25
 26

38. The Debtor requests that the Court rule that the 14-day stay period under Bankruptcy Rules 6004(h) and 6006(d) be waived so that the sale to the Purchaser can close immediately after the entry of the Sale Order. This is necessary to protect the value of the Purchased Assets, and to ensure that the estate will not continue to be depleted by on going operations for which it has insufficient capital. Debtor is in default of its obligations to its secured debtholders, which have not enforced their rights as an accommodation to Debtor. Debtor's business is not generating and cannot generate sufficient income to service Debtor's outstanding secured debt. Every day Debtor's obligations increase, and the business operations would immediately fail if the Debtor's secured noteholders exercised their remedies for Debtor's default.

39. Notice of this motion has been given to, among other parties, (i) the Purchaser; (ii) the Creditors' Committee, if any; (iii) the Secured Creditors; (iv) all shareholders (v) all other persons or entities holding or claiming to have liens or interests in any of the Purchased Assets; (vi) the Office of the United States Trustee; (vii) all creditors of the Debtor; (viii) the Internal

Revenue Service, the Oregon Department of Revenue, and any other entity to whom any tax or other charge may be due, or owing; (ix) all individuals or entities, if any, which have contacted the Debtor to express interest in purchasing the Purchased Assets; (x) all individuals or entities, if any, whom the Debtor believes might have an interest in purchasing the Purchased Assets; (xi) all parties requesting special notice in this Chapter 11 case; and (xii) all other persons or entities required to be served pursuant to orders of this Court, or known counsel for any of the foregoing.

40. The Debtor submits that the foregoing constitutes good and sufficient notice and that no other or further notice need be given in the circumstances.

WHEREFORE, the Debtor requests entry of an order granting the relief requested herein and such other and further relief as is appropriate.

DATED: March 20, 2015

MOTSCHENBACHER & BLATTNER, LLP

By: /s/ Nicholas J. Henderson
 Nicholas J. Henderson, OSB No. 074027
 nhenderson@portlaw.com
 117 SW Taylor Street, Suite 200
 Portland, OR 97204
 Telephone: (503) 417-0500
 Facsimile: (503) 417-0501

Proposed Attorneys for Debtor
 Earth Class Mail Corporation

EXHIBIT A
AGREEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

ASSET PURCHASE AGREEMENT

between

DELIVERED.IO, INC.,
a Delaware corporation
("Buyer")

and

EARTH CLASS MAIL CORPORATION,
an Oregon corporation,
in anticipation of it becoming a
Debtor in the United States Bankruptcy Court for the District of Oregon
("Seller")

February 13, 2015

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is made and entered into, effective as of February 13, 2015 (the “Effective Date”), by and between **DELIVERED.IO, INC.**, a Delaware corporation (the “Buyer”), and **EARTH CLASS MAIL CORPORATION**, an Oregon corporation, in anticipation of it becoming a Debtor in the United States Bankruptcy Court for the District of Oregon (“Seller”), with reference to the following facts:

RECITALS:

A. Seller owns and has operated a business providing online mail management services (the “Business”).

B. Seller has committed that, within 5 business days after execution of this agreement (the date Seller actually files being hereinafter called the “Petition Date”), it will file a voluntary petition commencing a Chapter 11 Bankruptcy Case styled *in re Earth Class Mail Corporation*, Case No. _____ [to be assigned] (hereinafter, the “Bankruptcy Case”) pursuant to Chapter 11 of Title 11 of the United States Code, Section 101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Oregon (the “Bankruptcy Court”).

C. Seller desires to sell all of the assets of the Business to Buyer and Buyer desires to purchase such assets from Seller (such transaction, and the related transactions described below, the “Transactions”).

D. The parties intend to effectuate the Transactions pursuant to Section 363 of the Bankruptcy Code.

E. The execution and delivery of this Agreement and Seller’s ability to consummate the Transactions set forth in this Agreement are subject, among other things, to the entry of the Sale Order (as defined in Section 7.2).

F. Those terms not otherwise defined herein shall have the meaning ascribed thereto in Section 14.16.

AGREEMENTS:

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 PURCHASE AND SALE OF ASSETS

1.1 AGREEMENT TO SELL. Upon the terms and subject to all of the conditions contained herein, Seller hereby agrees to sell, assign, transfer and deliver to Buyer at Closing (as defined in Article 3), and Buyer hereby agrees to purchase from Seller at Closing, the Purchased Assets (as defined in Section 1.2), free and clear of all Liens and Liabilities other than Permitted Liens and Assumed Liabilities (as defined in Section 1.4).

1.2 PURCHASED ASSETS. For purposes of this Agreement and subject to the terms and conditions set forth herein, the term “Purchased Assets” shall mean all of the assets constituting property (wherever located, whether tangible or intangible), owned, leased, or otherwise held by Seller in connection with the Business as of the Closing Date (as defined in Section 3.1), including but not limited to the following assets:

(a) **ACCOUNTS RECEIVABLE.** All of Seller’s accounts receivable (the “Accounts Receivable”), which shall be reflected in a memorandum that Seller shall deliver to Buyer at the Closing, listing the name of each customer, the amount due from such customer, and the aging thereof.

(b) **FURNITURE, FIXTURES, AND EQUIPMENT.** All of Seller’s tangible personal property (including all furniture, fixtures, computers, and other equipment), a list of which as of the date hereof is attached hereto at **EXHIBIT A**.

(c) **INVENTORY AND SUPPLIES.** All of Seller’s inventory relating exclusively to the Business (the “Inventory”), and all of Seller’s supplies relating exclusively to the Business (the “Supplies”).

(d) **BOOKS AND RECORDS.** All of Seller’s books, records and files pertaining directly and exclusively to the Business (excluding unissued checks drawn on any Seller checking account), including, without limitation, databases, files and lists of customers, supplier lists, catalogues, pricing, sales and promotional literature, trade show booths and display assets, manuals, and copies of equipment records.

(e) **CONTRACTS.** All of Seller’s existing contracts with third parties pertaining exclusively to the Business, including all agreements with vendors and with other suppliers used in the Business, all executory contracts related to the Seller Intellectual Property, including all computer software licenses and services contracts, and any leases (each, an “Assumed Lease”), a list of which is attached hereto at **EXHIBIT B** (all such contracts described in this Section 1.2(e), other than the Assumed Leases, are referred to herein as the “Assumed Contracts”), provided, however, with respect to any Assumed Lease or executory contract, Seller shall have paid all Cure Costs required under Section 8.6.

(f) **PREPAID EXPENSES.** All prepaid expenses and deposits exclusively associated with the Business and the Assumed Contracts and Assumed Leases.

(g) **INTELLECTUAL PROPERTY.** All intellectual property of Seller, to the extent owned by Seller or which Seller has a right to use and to the extent that such intellectual property may be assigned by Seller, including without limitation (A) all rights to all trade names and trademarks (whether registered or unregistered), including but not limited to “**Earth Class Mail**” and any derivative used exclusively in the Business, (B) all copyrights and other right, title, and interest in and to the product names, trade brochures and marketing materials, and drawings for the products sold in the Business, and (C) all trade secrets, business plans, marketing plans, and other intangible assets used exclusively in the Business, (D) all patents, provisional patents, and patent applications, (E) all domain names, including “earthclassmail.com”, and (F) all software used in the business (the “Software”) including but not limited to the following with respect to the Software owned by Seller:

- (i) All source code for the Software;
- (ii) All binaries with respect to the Software;

- (iii) All libraries with respect to the Software;
- (iv) All XML, HTML, and executables with respect to the Software;
- (v) All applications constructed with the source code for the Software;
- (vi) All documentation describing all or any portion of the Software or the source code therefor; and
- (vii) All of Seller's rights in and to all copyrights with respect to the Software.

A list of Seller's Intellectual Property that is material to the Business is set forth in **Schedule 4.5(b)(i)**.

(h) **GOODWILL.** All goodwill associated exclusively with the Business, including (i) the name "**Earth Class Mail**" and any derivative thereof, (ii) all phone and fax numbers used in the Business, and (iii) all goodwill associated with the existing contracts of Seller.

(i) **CLAIMS.** The right to tender claims asserted exclusively against Buyer to Seller's insurance companies under Seller's casualty insurance policies (to the extent such right is assignable under the terms of Seller's policies of insurance) relating to the Purchased Assets.

1.3 EXCLUDED ASSETS. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the "Excluded Assets"):

(a) **CORPORATE RECORDS.** The corporate seals, organizational documents, minute books, stock books, Tax returns, books of account or other records having to do with the corporate organization of Seller.

(b) **INSURANCE.** All insurance policies of Seller and all rights to applicable claims and proceeds thereunder, except to the extent set forth in Section 1.2(i).

(c) **RIGHTS UNDER AGREEMENT.** The rights which accrue or will accrue to Seller under this Agreement and all agreements related hereto.

(d) **EXCLUDED CONTRACTS.** All contracts and leases listed on **EXHIBIT C**, as it may be updated from time to time pursuant to Section 6.3 ("Excluded Contracts").

1.4 ASSUMED LIABILITIES. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller as of the Closing Date (collectively, the "Assumed Liabilities"), and no other Liabilities:

(a) **ACCOUNTS PAYABLE.** All trade accounts payable of Seller to third parties in connection with the Business that remain unpaid and are not delinquent on or after the Closing Date and that arose in the ordinary course of business consistent with past practice. A list of all such trade accounts payable existing as of the Effective Date is set forth in **Schedule 1.4(a)**.

(b) **ASSUMED CONTRACTS.** All Liabilities in respect of the Assumed Contracts and Assumed Leases but only to the extent that, in each case, such Liabilities thereunder are required to be performed on or after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller prior to the Closing.

(c) **ACCRUED VACATION.** All Liabilities of Seller in respect of any accrued and unpaid vacation and paid time-off benefits with respect to the Employees (such Liabilities, "Accrued Vacation").

(d) **COBRA.** All Liabilities and obligations related to the provision of COBRA continuation coverage after Closing to individuals who are "M & A qualified beneficiaries," as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a), with respect to the transactions contemplated in or by this Agreement.

(e) **NO OTHER ASSUMED LIABILITIES.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT AS SET FORTH IN THIS SECTION 1.4, AT THE CLOSING BUYER SHALL NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY OF SELLER'S DEBTS, LIABILITIES, OR OTHER OBLIGATIONS, WHETHER OR NOT ARISING OUT OF OR RELATING TO THE PURCHASED ASSETS OR THE BUSINESS OR ANY OTHER BUSINESS OF SELLER. ALL LIABILITIES AND OBLIGATIONS OF SELLER SHALL BE AND REMAIN SOLELY THE LIABILITIES AND OBLIGATIONS OF SELLER.

1.5 ASSUMED CONTRACTS AND ASSUMED LEASES.

(a) Seller will provide notice to each counterparty to the contracts and leases listed on **Schedule 1.5(a)** (the "Material Agreements") that the contract or lease will be assumed pursuant to the provisions hereof, and provide each counterparty due notice of the opportunity to object to the terms of the assumption, or the terms of the assignment, of any such contract or lease prior to entry of the Sale Order.

(b) With respect to each Assumed Contract and Assumed Lease, on the Closing Date Seller shall (i) assume such Assumed Contract or Assumed Lease in the Bankruptcy Case and (ii) subject to Seller paying any amounts designated in **Schedule 1.5(b)** as Cure Costs and providing adequate assurance of performance to the counterparty thereto to the extent required by the Bankruptcy Court, assign such Assumed Contract or Assumed Lease to Buyer pursuant to an Order of the Bankruptcy Court (which may be the Sale Order). Buyer is to have no liability for any Cure Costs except any that Buyer elects to pay. Effective on the Closing Date, Seller shall assign to Buyer each such Assumed Contract or Assumed Lease.

(c) The Sale Order shall provide that, as of the Closing, Seller shall assign to Buyer each Assumed Contract and Assumed Lease. At least 7 business days prior to the filing of the Sale Order, Seller shall identify any leases, contracts and other rights, property and commitments included in the Purchased Assets that cannot be transferred or assigned effectively without the consent of any third party or Order of the Bankruptcy Court. Buyer shall be permitted to request that Seller obtain a signed certification (an "Estoppel Certificate") from any counterparty to the effect that as of the date of assignment to Buyer, there are no uncured defaults or events which, with the giving of required notice or otherwise, might constitute an event of default, and if so requested by Buyer, Seller shall use commercially reasonable efforts to obtain such signed certification.

ARTICLE 2 CONSIDERATION FOR ASSETS

2.1 PURCHASE PRICE. The purchase price for the Purchased Assets identified in Section 1.2, above, shall be \$5,000,000, subject to adjustment pursuant to Section 2.2 (the “Purchase Price”), payable as follows:

(a) **DEPOSIT.** Upon execution of this Agreement, and within 1 business day following the Petition Date, Buyer shall deposit with U.S. Bank National Association (the “Escrow Agent”), to be held in trust until disbursed pursuant to Section 13.3, a good faith deposit of \$150,000 (the “Deposit”), which shall be applied toward Buyer’s payment of the Purchase Price if Buyer is the successful purchaser, or otherwise released to Buyer or Seller, as the case may be, in accordance with Section 13.3.

(b) **ESCROW.** At the Closing, Buyer shall wire \$350,000, or such other amount as is necessary for the total amount deposited in escrow by the Buyer to equal \$500,000 (the “Escrow Amount”), to the Escrow Agent, to be held by the Escrow Agent for a 1 year period to satisfy any claims for Damages (as defined in Section 12.3) pursuant to Article 12. Such amount shall be paid to Seller, if at all, after the expiration of the Survival Period (as defined in Section 12.1), provided, however, that if a claim for Damages has not yet been resolved, the Escrow Agent may retain a portion of the Escrow Amount equal to the unresolved claim amount until that claim has been finally resolved in accordance with the Escrow Agreement.

(c) **CLOSING PAYMENT.** At the Closing, Buyer shall pay the Purchase Price, less the Escrow Amount and Deposit (the “Closing Payment”), to Seller by wire transfer to the account(s) designated by Seller or as otherwise provided in the Sale Order that has become a Final Order.

(d) **REIMBURSEMENT COSTS.** At the Closing, Buyer shall also be required to pay the Reimbursement Costs, in cash, to the extent required by Section 11.1, which Reimbursement Costs shall be in addition to the Purchase Price.

2.2 PURCHASE PRICE ADJUSTMENT.

(a) CLOSING ADJUSTMENT.

(i) At least 3 business days before the Closing, Seller shall prepare and deliver to Buyer a statement setting forth its good faith estimate of Closing Working Capital (the “Estimated Closing Working Capital”) in a form similar to that set forth in **Schedule 2.2(a)(ii)**, which statement shall contain an estimated balance sheet of the Seller as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Estimated Closing Working Capital (the “Estimated Closing Working Capital Statement”) and a certificate of the Chief Financial Officer of Seller that the Estimated Closing Working Capital Statement was prepared in accordance with GAAP applied in a manner consistent with the Seller’s past practice.

(ii) The “Closing Adjustment” shall be an amount equal to the Estimated Closing Working Capital minus \$500,000 (the “Target Working Capital”). If the Closing Adjustment is a positive number, the Purchase Price shall be increased by the amount of the Closing Adjustment. If the Closing Adjustment is a negative number, the Purchase Price shall be reduced by the amount of the Closing Adjustment.

(b) POST-CLOSING ADJUSTMENT.

(i) Within 90 days after the Closing Date, Buyer shall prepare and deliver to Seller a statement setting forth its calculation of Closing Working Capital, which statement shall contain a balance sheet of the Seller as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Working Capital (the “Closing Working Capital Statement”) and a certificate of the Chief Financial Officer of Buyer that the Closing Working Capital Statement was prepared in accordance with GAAP applied in a manner consistent with the Seller’s past practice.

(ii) The post-closing adjustment shall be an amount equal to the Closing Working Capital minus the Estimated Closing Working Capital (the “Post-Closing Adjustment”). If the Post-Closing Adjustment is a positive number greater than \$5,000, Buyer shall pay to Seller an amount equal to the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, the absolute value of which is greater than \$5,000, Seller shall pay to Buyer an amount equal to the Post-Closing Adjustment.

(c) EXAMINATION AND REVIEW.

(i) After receipt of the Closing Working Capital Statement, Seller shall have 30 days (the “Review Period”) to review the Closing Working Capital Statement. During the Review Period, Seller and its accountants and financial advisors shall have full access to the books and records of the Buyer, the personnel of, and work papers prepared by, Buyer and/or Buyer’s accountants and financial advisors to the extent that they relate to the Closing Working Capital Statement and to such historical financial information (to the extent in Buyer’s possession) relating to the Closing Working Capital Statement as Seller may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below), provided, that such access shall be in a manner that does not interfere with the normal business operations of Buyer.

(ii) On or prior to the last day of the Review Period, Seller may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth Seller’s objections in reasonable detail, indicating each disputed item or amount and the basis for Seller’s disagreement therewith (the “Statement of Objections”). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the “Resolution Period”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding.

(iii) If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“Disputed Amounts”) shall be submitted for resolution to the office of Moss Adams LLP or, if Moss Adams LLP is unable to serve, Buyer and Seller shall appoint by mutual agreement the office of an impartial nationally or regionally recognized firm of independent certified public accountants other than the accountants of Seller or Buyer (the “Independent Accountants”) who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments

to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The Independent Accountants shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

(iv) The fees and expenses of the Independent Accountant shall be paid by Seller, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Seller or Buyer, respectively, bears to the aggregate amount actually contested by Seller and Buyer.

(v) The Independent Accountants shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(vi) Except as otherwise provided herein, any payment of the Post-Closing Adjustment by the Buyer or Seller shall (A) be due within 10 business days of final determination of the Post-Closing Adjustment in accordance with this Section 2.2(c); and (B) be paid by wire transfer to the account(s) designated by the Seller or Buyer, as the case may be.

(d) **ADJUSTMENT FOR TAX PURPOSES.** Any payments made pursuant to Section 2.2 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by applicable law.

2.3 NO ASSUMPTION OF LIABILITIES. Buyer shall not assume, and Seller shall retain, all of Seller's Liabilities that exist as of the Closing Date other than the Assumed Liabilities.

ARTICLE 3 CLOSING

3.1 CLOSING. Upon the terms and conditions set forth in this Agreement, the closing of the sale of the Purchased Assets (the "Closing") shall occur as promptly as practicable and no later than the 5th business day following the date on which the Sale Order has become a Final Order. The date and time at which the Closing actually occurs is referred to as the "Closing Date".

3.2 DOCUMENTS AND CONSIDERATION DELIVERED BY SELLER AT CLOSING. At the Closing, Seller shall deliver to Buyer the executed copies of the following documents in a form reasonably satisfactory to Buyer:

(a) The Escrow Agreement, duly executed by Seller in a form reasonably satisfactory to Buyer;

(b) A bill of sale and assignment and assumption agreement in form reasonably acceptable to Buyer, covering all of the Purchased Assets;

(c) Instruments of assignment of the Seller Intellectual Property included in the Purchased Assets sufficient to vest Seller's rights to the Seller Intellectual Property in Buyer;

(d) All files, documents, and electronically stored information in the possession of or controlled by Seller relating to the Seller Intellectual Property;

(e) All agreements of any sort between Seller and Employees or Former Employees relating to the Seller Intellectual Property, whether relating to ownership, assignment, production, development, non-disclosure, non-competition or otherwise;

(f) To the extent approved by the Sale Order, instruments of assumption and assignment of the Assumed Leases and Assumed Contracts;

(g) To the extent in Seller's possession: (i) all files for the Assumed Leases and Assumed Contracts, and (ii) all keys and the combination of any equipment, machineries, safes, and access codes for any electronic security included in the Purchased Assets; and

(h) Each other document reasonably requested by Buyer to transfer the Purchased Assets in accordance with the terms of this Agreement.

3.3 DOCUMENTS AND CONSIDERATION DELIVERED BY BUYER AT CLOSING. At the Closing, Buyer shall deliver the following to Seller:

(a) The Escrow Agreement, duly executed by Buyer in a form reasonably satisfactory to Seller;

(b) An assignment and assumption agreement covering all of the Purchased Assets and Assumed Liabilities, duly executed by Buyer;

(c) To the extent approved by the Sale Order, instruments of assumption and assignment of the Assumed Leases and Assumed Contracts, duly executed by Buyer;

(d) The Closing Payment; and

(e) The Reimbursement Costs.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth on the Disclosure Schedules attached to this Agreement, which exceptions shall be deemed to be part of the representations and warranties made hereunder, Seller hereby represents and warrants to Buyer that:

4.1 ORGANIZATION OF SELLER. Seller is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, the state of Oregon, and qualified to do business in the jurisdictions set forth in **Schedule 4.1**.

4.2 AUTHORITY AND CONSENTS. Seller has full power and authority to enter into this Agreement, and following the entry of the Sale Order, Seller will have full power and authority to carry out the transactions contemplated by this Agreement. This Agreement and its execution and delivery to Buyer have been duly authorized by Seller. This Agreement, subject to the entry of the Sale Order,

constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the effect, if any, of general principles of equity, including rules of law governing specific performance, injunctive relief, and other equitable remedies.

4.3 NO VIOLATION. Except as set forth in **Schedule 4.3**, neither the execution and delivery of this Agreement, nor the consummation of the transactions provided for herein by Seller, will conflict with, or (with or without notice or lapse of time, or both) result in a termination, breach, impairment or violation of, (a) in any material respect, any contract or any other agreement, instrument or commitment pertaining to the Business to which Seller is a party or by which it is bound, or (b) any federal, state, local or foreign law, judgment, writ, decree, order, statute, rule or regulation applicable to Seller or by which any of its properties or assets is bound or affected, except where the conflict, termination, breach, impairment or violation would have a Material Adverse Effect. The consummation of this Agreement and Buyer's acquisition of the Purchased Assets and exercise of the rights hereunder in and of themselves will not (x) result in the creation of any Lien upon the Purchased Assets, or (y) require the consent of any third party except for the Sale Order and any consents which would not have a Material Adverse Effect if not obtained. Except as set forth in **Schedule 4.3**, Seller is not a party to, or otherwise subject to any provision contained in, any instrument or agreement which restricts or otherwise limits the Seller's right to transfer the Purchased Assets under the terms contemplated by this Agreement.

4.4 TITLE TO ASSETS. Seller has, and upon delivery to Buyer on the Closing Date of instruments of transfer contemplated herein, as authorized by the terms of the Sale Order, Seller will thereby transfer to Buyer good and marketable title to, or in the case of property leased or licensed by Seller, a valid and subsisting leasehold interest in or a legal, valid and enforceable licensed interest in or right to use, all of the Purchased Assets free and clear of Liens other than Permitted Liens.

4.5 INTELLECTUAL PROPERTY.

(a) Definitions.

(i) "Inbound License" means any contract pursuant to or under which any Intellectual Property Rights or Public Software are licensed to the Seller.

(ii) "Intellectual Property Right(s)" means any or all of the following and all rights in, arising out of, or associated therewith, which in each case may exist or be created under the laws of any jurisdiction in the world: (1) all patents, utility models and rights in inventions, discoveries, methods, apparatuses and processes (whether or not capable of being patented) (collectively, "Patents"); (2) all trade secrets, know-how, methods, processes, developments, discoveries, ideas, designs, algorithms, models, strategies, techniques and confidential or proprietary information ("Trade Secrets"); (3) all rights associated with software (including both source code and executable code and associated application programming interfaces) and works of authorship, including copyrights, moral rights, or rights of publicity associated therewith ("Copyrights"); (4) all mask works, mask work registrations and applications therefore ("Mask Works"); (5) all industrial designs and any registrations and applications therefore throughout the world; (6) all rights in domain names and applications and registrations therefor ("Domain Names"); (7) all trade names, trade dress, logos or other corporate designations, slogans, brand names, trademarks and service marks, and in each case all goodwill associated therewith ("Trademarks"); (8) all rights in databases and data compilations; (9) any and all registrations and applications (including provisional applications) for items (1)-(8), and all reissues, divisionals, re-examinations, corrections, renewals, extensions, continuations and continuations-in-part thereof; and (10) any similar, corresponding or equivalent rights to any of the foregoing.

(iii) “Public Software” means any software that contains, includes, incorporates, or has instantiated therein, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (1) GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL); (2) the Artistic License (e.g., PERL); (3) the Mozilla Public License; (4) the Netscape Public License; (5) the Sun Community Source License (SCSL); (6) the Sun Industry Standards License (SISL); (7) the BSD License; and (8) the Apache License.

(iv) “Registered Intellectual Property Right(s)” means any and all Intellectual Property Rights that are registered, filed, recorded, or issued under the authority of any state, government or other public or private legal authority at any time, including without limitation (1) Patents; (2) registered Trademarks; (3) registered Copyrights; (4) registered Mask Works; (5) Domain Names; and (6) any applications for any of the foregoing.

(v) “Seller Intellectual Property” means any and all Intellectual Property Rights owned (in whole or in part) by, purported to be owned by, or exclusively licensed to, the Seller. For clarification, “Seller Intellectual Property” does not include any non-exclusive Intellectual Property Rights granted to Seller in any license agreement, covenant not to sue, or other contract.

(vi) “Seller IP Contract” means any contract to which the Seller is a party or by which the Seller is bound that contains any assignment or license of, or covenant not to assert or enforce, any Intellectual Property Right or that otherwise relates to any Seller Intellectual Property or any Intellectual Property Rights developed by, with, or for the Seller.

(vii) “Seller Product” means any product or service presently being (or that in the past 12 months has been) designed, developed, manufactured, marketed, distributed, provided, licensed, or sold by the Seller.

(viii) “Seller Registered Intellectual Property Rights” means all Registered Intellectual Property Rights owned (in whole or in part) by, purported to be owned by, filed in the name of or applied for by, or exclusively licensed to the Seller.

(b) *Fundamental Intellectual Property Representations.*

(i) ***Disclosures.*** **Schedule 4.5(b)(i)** is a complete and accurate list of all of the following:

(A) all Intellectual Property Rights material to the Business that are both (1) licensed to the Seller or in which the Seller has received or acquired any right or interest and (2) embedded or incorporated into any Seller Product, constitute a software development tool or are used directly in the distribution or support of any Seller Product (other than (A) Public Software, which is separately contemplated by Section 4.5(b)(i)(B), (B) Intellectual Property Rights purchased by the Seller in the acquisitions contemplated by Section 4.5(c)(iv), and (C) widely-available commercial software products that are licensed pursuant to a non-exclusive, internal-use license and are generally available on standard terms for less than \$5,000, for each such software product, in annual license and maintenance fees for the license type and quantity used by the Seller), and the corresponding Contracts pursuant to or

under which such Intellectual Property Rights are licensed to the Seller or such right or interest is received or acquired by the Seller;

(B) all Public Software programs, libraries and/or materials that are embedded or incorporated into any Seller Product, which list shall contain (A) the name of the Public Software, (B) the license name and version pursuant to which the Seller has received a license to such Public Software, (C) a short statement regarding how the Public Software is being used by the Seller, (D) whether or not the Seller has made any modifications to such Public Software and (E) whether or not such Public Software is distributed;

(C) all other Intellectual Property Rights that are both (1) licensed to the Seller or in which the Seller has received or acquired any right or interest and (2) material to the business of the Seller as it currently is conducted (other than widely-available commercial software products that are licensed pursuant to a non-exclusive, internal-use license and are generally available on standard terms for less than \$5,000, for each such software product, in annual license and maintenance fees for the license type and quantity used by the Seller) and the corresponding contracts pursuant to or under which such Intellectual Property Rights are licensed to Seller;

(D) each contract pursuant to or under which any Person has been granted any license to or under, or otherwise has received or acquired any right or interest in (whether or not currently exercisable or vested), any Seller Intellectual Property (other than non-exclusive, internal-use licenses granted to end user customers in the ordinary course of business on materially the same terms as are in the Seller's form customer contract for the applicable Seller Product located on the Seller's website), including, but not limited to, contracts that contain any grant or assignment of any license or other rights in or to any Seller Intellectual Property upon the occurrence of some future event or circumstance;

(E) each contract pursuant to or under which (A) the source code for any Seller Product or any other confidential information or Trade Secret of the Seller has been provided to an escrow agent or to any other Person or (B) the Seller is obligated (whether a present, future or contingent obligation) to provide the source code for any Seller Software or any other confidential information or Trade Secret of the Seller to an escrow agent or to any other Person; and

(F) the name of each Person who is or was, at any time since June 1, 2007, an employee or contractor of the Seller and who is or was involved in the contribution, creation or development of any Seller Intellectual Property and the corresponding contracts with such Persons.

(ii) ***Specific Representations.***

(A) Seller has provided complete and accurate copies of all contracts identified in **Schedule 4.5(b)(i)**, each of which, to the Knowledge of the Seller, is valid and enforceable.

(B) To the Knowledge of Seller, no Public Software has been used in any way that (A) would or could require, when the object code is distributed, the distribution or provision of access to the source code of any Seller Product or portion thereof that is combined with or linked to such Public Software or based upon such Public Software, (B) would or could require the distribution for free or at some reduced price of any Seller Software or portion thereof that is combined with or linked to such Public Software or based upon such Public Software or (C) would or could otherwise impose any

limitation, restriction or condition on the right or ability to use or distribute any Seller Software or portion thereof that is combined with or linked to such Public Software or based upon such Public Software.

(C) No source code or other material confidential information or material Trade Secret of the Seller has been disclosed to any Person other than under Contracts identified pursuant to **Schedule 4.5(b)(i)(E)** or under a confidentiality or non-disclosure agreement, except to the extent that such disclosure would not adversely affect the Seller Intellectual Property being transferred to Buyer.

(D) No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, result in the delivery, license, or disclosure to any other Person of the source code for any Seller Software or any other material confidential information or material Trade Secret of the Seller.

(E) The Seller is not in material breach of nor has the Seller failed to perform in any material respect under any Inbound License.

(F) To the Knowledge of the Seller, the Seller Products and the business of the Seller as it currently is conducted do not infringe, misappropriate or violate any Copyright, Trade Secret or other Intellectual Property Right of any Person. No infringement, misappropriation, or similar claim or proceeding is pending or, to the Knowledge of the Seller, has been threatened against the Seller or against any other Person who may be entitled to be indemnified, defended, held harmless, or reimbursed by the Seller with respect to such claim or proceeding. The Seller has never received any written notice or other communication relating to any actual, alleged, or suspected infringement, misappropriation, or violation of any Intellectual Property Rights of another Person (including any claim that the seller must license or refrain from using any Intellectual Property Rights of any third party, and including any so-called "invitation to license").

(G) The Seller exclusively owns all right, title and interest to and in the Seller Intellectual Property owned by Seller free and clear of any Liens other than Permitted Liens, and no other party is a joint owner of any Seller Intellectual Property owned by Seller; provided, however, that nothing in this Section 4.5(b)(ii)(G) will be deemed to be or constitute any representation or warranty of non-infringement, which is dealt with exclusively in Section 4.5(b)(ii)(F).

(c) *Additional Intellectual Property Disclosures and Representations.*

(i) ***No Source Code Documentation.*** The source code for the Seller Products contains over 700,000 lines of custom code without any annotations or programmer's comments, nor has the code otherwise been documented in a manner, that: (A) is consistent with customary code annotation conventions and good practices in the software industry; or (B) is sufficient to independently enable a programmer of reasonable skill and competence to understand analyze and interpret program logic, correct errors and improve, modify and support the Seller Software.

(ii) ***Copyrights, Trademarks and Patents.*** **Schedule 4.5(c)(ii)** is a complete and accurate list of all Registered Intellectual Property Rights and unregistered Copyrights and Trademarks that are material to the Seller or its business and are included in the Seller Intellectual Property. To the Knowledge of the Seller, no trademark or trade name owned, used, or applied for by the

Seller conflicts or interferes with any trademark or trade name owned, used, or applied for by any other Person. The Seller has not taken any action that would set a United States patent bar date within 120 days of the Closing Date for any patent application being contemplated or prepared by the Seller as of the Closing Date.

(iii) **Trade Secrets.** The Seller has taken reasonable steps required to protect the Seller's rights in (A) confidential information and Trade Secrets of the Seller and (B) confidential information and Trade Secrets provided by any third Person to the Seller, and to protect such information and Trade secrets against loss, theft and unauthorized access, use or disclosure.

(iv) **Intellectual Property Acquisition, Dispositions and Joint Ownership.** Schedule 4.5(c)(iv) is a complete and accurate list of all Intellectual Property Rights material to the business that were acquired, assigned or transferred by the Seller (other than from Employees) at any time since June 1, 2007, whether by contract or operation of law.

(v) **Employees and Contractors.** To the Knowledge of Seller, no employee of the Seller is (A) bound by or otherwise subject to any contract restricting him or her from performing his or her duties for the Seller; or (B) in breach of any contract with any former employer or other Person concerning Intellectual Property Rights or confidentiality due to his or her activities as an employee of the Seller.

(vi) **Government Rights.** No funding, facilities, or personnel of any Governmental Authority or any college, university, or other educational institution were used, directly or indirectly, to develop or create, in whole or in part, any Seller Intellectual Property.

(vii) **Compliance with Contracts.** (A) The Seller is not in material breach of nor has the Seller failed to perform in any material respect under any Seller IP Contract; (B) to the Knowledge of the Seller, no other party to any such Contract is in breach thereof; and (C) to the Knowledge of the Seller there is no dispute regarding the scope of any such Contract, or performance under any such contract, including with respect to any payments to be made or received by the Seller thereunder.

(viii) **Third Party Infringement of Seller Intellectual Property.** To the Knowledge of the Seller, no Person has infringed, misappropriated or otherwise violated any Seller Intellectual Property and no Person is currently infringing, misappropriating or otherwise violating any Seller Intellectual Property.

(ix) **Software defects.** To the Knowledge of the Seller, none of the software that comprises or that enables or is embedded within any Seller Product (A) contains any material bug, defect or error that materially and adversely affects the use, functionality, performance or value thereof or (B) fails in a material respect to comply with any applicable warranty or other contractual commitment relating to the use, functionality or performance of any Seller Product.

(x) **Harmful Code.** To the Knowledge of the Seller, no software that comprises or that enables or is embedded within any Seller Product contains any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have any of the following functions: (A) disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing

unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (B) damaging or destroying any data or file without the user's consent.

(xi) **Royalties.** The Seller is not and following the Closing Date will not be obligated to pay any royalties or other fees or consideration with respect to Intellectual Property Rights of any third party embedded or otherwise used in conjunction with any Seller Product; provided, however, that nothing in this Section 4.5(c)(xi) will be deemed to be or constitute any representation or warranty of non-infringement, which is dealt with exclusively in Section 4.5(b)(ii)(F).

(xii) **Sufficiency.** To the Knowledge of the Seller, the Seller Intellectual Property and the Intellectual Property Rights licensed to the Seller pursuant to the Inbound Licenses constitute, and after the Closing the Buyer will have, all Intellectual Property Rights needed to conduct the business of the Seller in all material respects as currently conducted; provided, however, that nothing in this Section 4.5(c)(xi) will be deemed to be or constitute any representation or warranty of non-infringement, which is dealt with exclusively in Section 4.5(b)(ii)(F).

(xiii) **Transferable.** All Seller Intellectual Property owned by Seller is fully transferable, alienable and licensable by the Seller, without payment of any kind to any Person.

(xiv) **Effects of This Transaction.** Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to the Buyer, by operation of law or otherwise, of any contracts or agreements to which the Seller is a party, will result in (A) Buyer, or any affiliate of Buyer, being obligated to pay with respect to any Intellectual Property Right any amount or other consideration other than ongoing fees, royalties or payments that the Seller would otherwise be required to pay pursuant to the terms of any agreement to which the Seller is a party or by which it is bound had the transactions contemplated by this Agreement not occurred; (B) a loss of, or Lien on, any Seller Intellectual Property; or (C) a breach of any Seller IP Contract or Inbound License.

4.6 PRIVACY; DATA PROTECTION.

(a) Except as disclosed in **Schedule 4.6(a)**, to the Seller's Knowledge all personal and behavioral information that has been collected by or on behalf of the Seller whether (i) from the Seller's customers, (ii) from users of the Seller's website, or (iii) by or through the Seller's products or services, or otherwise, has been collected, stored, maintained and used in accordance with all Legal Requirements related to privacy. The Seller has not received a notice of noncompliance with or audit, investigation or proceeding with respect to any data protection laws, rules, regulations, guidelines or industry standards nor of any contract (including privacy policies and terms of use on any website) governing any information or data used by the Seller. The Seller has provided Buyer with true and correct copies of all current and past privacy policies and terms of use for the last 5 years that apply to the personal and behavioral information used by the Seller. Except as disclosed in **Schedule 4.6(a)**, the Seller's practices are in compliance with (x) its current privacy policy posted on the Seller's website, and (y) to the Knowledge of the Seller, its customers' privacy policies, when required to do so by contract. To the Knowledge of Seller, there has been no unauthorized access to or use of personal or behavioral information in the possession of the Seller or, to the Knowledge of the Seller, any third party to which Seller has provided such information. To the Knowledge of the Seller, the Seller is not subject to any obligation that would prevent the Buyer from using the personal and behavioral information collected by the Seller either (1) from the Seller's customers, (2) from users of the Seller's website, or (3) by the Seller's products or services in a manner consistent with any law or industry standard regarding the collection, retention, use, or disclosure of such personal and behavioral information.

(b) Except as disclosed in **Schedule 4.6(b)**, the Seller has not received a written complaint regarding the Seller's collection, use or disclosure of personal and behavioral information. To the Knowledge of the Seller, each of the execution, delivery and performance of this Agreement complies with all Legal Requirements relating to privacy and does not violate Seller's privacy policies. True and correct copies of all such privacy policies are attached to **Schedule 4.6(b)** of the Seller Disclosure Schedule, and the Seller has at all times made all privacy policy disclosures to such users or customers on the Seller's websites and otherwise as required by any Legal Requirement. To the Knowledge of the Seller, none of such disclosures made or contained in any such privacy policy has been inaccurate, misleading or deceptive or in violation of any Legal Requirement in any material respect.

(c) The Seller has implemented and maintains a plan, or plans, which (i) identifies internal and external risks to the security of data and confidential information, including personally identifiable information; (ii) implements and monitors adequate and effective administrative, electronic and physical safeguards to control those risks; (iii) maintains notification procedures in compliance with all Legal Requirements and privacy or other policies in the case of any breach of security compromising data, including unencrypted data containing personally identifiable information; and (iv) adequately provides for the prevention of data loss. To its Knowledge, Seller has not experienced any data loss, breach of security or otherwise unauthorized access by third parties to confidential information, including personally identifiable information, in the Seller's possession, custody or control. Seller, and to the Knowledge of the Seller, its applicable vendors are currently compliant with all information and data security requirements of the Payment Card Industry Data Security Standard ("PCI DSS") and during the last 18 months has timely conducted all self-assessments and independent third-party audits, as required by the PCI DSS.

4.7 COMPLIANCE WITH LAW; PERMITS.

(a) Except as set forth in **Schedule 4.7(a)**, to its Knowledge, the Seller is and has been in compliance in all material respects with all Legal Requirements applicable to it in connection with the conduct or operation of the Business and the ownership or use of the Purchased Assets. Neither Seller nor any of its executive officers has received, nor to the Knowledge of Seller is there any basis for, any notice, order, complaint or other communication from any Governmental Authority or any other Person that such Seller is not in compliance in all material respects with any such Legal Requirements.

(b) **Schedule 4.7(b)** sets forth a true and complete list of all permits necessary for Seller to own, lease and operate the Purchased Assets and to carry on the Business in all material respects as currently conducted (the "Permits"). Seller is and has been in compliance in all material respects with all such Permits. As of the date hereof, no suspension, cancellation, modification, revocation or nonrenewal of any Permit is pending or, to the Knowledge of Seller, threatened.

4.8 CONSENTS AND APPROVALS. Subject to the Sale Order becoming a Final Order, no consent, approval or authorization of, or declaration, filing or registration with, any government, regulatory authority or third party is required in connection with the execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated thereby.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that:

5.1 AUTHORIZATION; ETC. Buyer has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The Buyer has taken all action required by law to authorize the execution and delivery of this Agreement and the transactions contemplated hereby, and this Agreement is a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as to the effect, if any, of (a) applicable bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and (b) the effect of general principles of equity, including rules of law governing specific performance, injunctive relief and other equitable remedies.

5.2 NO VIOLATION. The execution and performance of this Agreement will not result in a violation of Buyer's existing certificate of organization or limited liability company operating agreement or other organizational or governing documents. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will be in conflict with, or constitute a default under or cause the acceleration of the maturity of any debt or obligation pursuant to, any agreement or commitment to which Buyer is a party or by which Buyer is bound, or violate any statute or law or any judgment, decree, order, regulation, or rule of any court or governmental authority. The consummation of this Agreement and Buyer's acquisition of the Assets and exercise of the rights hereunder in and of themselves will not (x) result in the creation of any Lien upon the assets of Buyer, or (y) require the consent of any third party (other than parties to contracts or other agreements or arrangements with Seller). Buyer is not a party to, or otherwise subject to any provision contained in, any instrument or agreement which restricts or otherwise limits either Buyer's right to acquire the Assets or will restrict Buyer's use thereof after transfer to Buyer.

5.3 CONSENTS AND APPROVALS OF GOVERNMENT AUTHORITIES. No consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority is required in connection with the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby.

5.4 NO BROKERS. No broker, finder or investment banker is entitled to brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer. Buyer shall indemnify, defend, and hold Seller free and harmless from any liability, loss or expense (including attorney's fees) arising in connection with any such claim.

5.5 SUFFICIENCY OF FUNDS. Buyer has, and at the Closing will have, sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and the Reimbursement Costs and consummate the transactions contemplated by this Agreement.

ARTICLE 6
SELLER'S PRE-CLOSING COVENANTS

During the period from the date of this Agreement until the Closing, Seller covenants and agrees as follows:

6.1 ADVICE OF CHANGES. Seller shall promptly advise Buyer in writing of any event occurring subsequent to the date of this Agreement that (a) would render any representation or warranty of Seller contained in this Agreement, if made on or as of the date of such event or the Closing Date, untrue or inaccurate in any material respect or (b) would constitute a Material Adverse Effect on the Business or Purchased Assets, individually or in the aggregate.

6.2 MAINTENANCE OF BUSINESS. Seller shall use commercially reasonable efforts to carry on and preserve the Business and its relationships with customers, suppliers, employees and others in all material respects in substantially the same manner as it has prior to the date hereof. If Seller becomes aware of a material deterioration in the relationship with any customer, supplier or key employee of Seller, it will promptly bring such information to the attention of Buyer in writing and, if requested by Buyer, will exert its commercially reasonable efforts to restore the relationship. Seller shall also maintain the current levels of, and policies regarding, the insurance on the Business and Purchased Assets that exist as of the date of this Agreement.

6.3 CONDUCT OF BUSINESS OF SELLER. Except as contemplated by this Agreement or consented to in writing by the Buyer (which consent shall not be unreasonably withheld), during the period from the date hereof to the Closing Date, Seller shall conduct the Business in the ordinary course of business consistent with past practice and, to the extent consistent therewith, with no less diligence and effort than would be applied in the absence of this Agreement, use its commercially reasonable efforts to preserve intact its current business operations, keep available the service of its current officers and employees and preserve its relationships with customers, suppliers, distributors, lessors, creditors, employees, contractors and others having business dealings with it, with the intention that its goodwill and ongoing businesses shall be unimpaired at the Closing Date except to the extent such impairment is caused by the Bankruptcy Case. Seller shall provide written notice to Buyer of the entry into any material contract, in which case Buyer shall have 5 days after the receipt of such written notice to add such contract to **Exhibit C** as an Excluded Contract.

6.4 REGULATORY APPROVALS. Seller shall execute and file, or join in the execution and filing, of any application or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental Authority which may be reasonably required, or which Buyer may reasonably request, in connection with the consummation of the transactions contemplated by this Agreement. Seller shall use commercially reasonable efforts to obtain all such authorizations, approvals and consents.

6.5 LITIGATION. Seller shall notify Buyer in writing promptly after learning of any material actions, suits, proceedings or investigations by or before any court, board or governmental agency, initiated by or against it, or known by it to be threatened against it.

6.6 ACCESS TO INFORMATION; PRE-CLOSING INVENTORY. Until the Closing or termination of this Agreement pursuant to the terms of Article 12, below, Seller shall permit Buyer and its agents full access to all books and records of Seller pertaining to its Business (including, without limitation, any and all information relating to Seller's taxes, commitments, contracts, leases, licenses, and real, personal and intangible property and financial condition), and full access to all employees, customers and suppliers thereof, in order to make a reasonable and detailed investigation of Seller's Business; provided all such access shall be at reasonable times and on reasonable prior notice to Seller, and shall be coordinated through the Chief Executive Officer of Seller. Seller will participate and cooperate with Buyer in completing such due diligence. Seller will make available to Buyer and its

representatives all information reasonably necessary to facilitate such investigation and will instruct those persons with information concerning the subject matter of such investigation to disclose it to and cooperate with Buyer.

6.7 CONTACT WITH CUSTOMERS, VENDORS AND EMPLOYEES. Seller shall use commercially reasonable efforts to facilitate Buyer's contact and communication with Employees and customers, suppliers, vendors and distributors of the Business.

6.8 SATISFACTION OF CONDITIONS PRECEDENT. Seller shall use commercially reasonable efforts to satisfy or cause to be satisfied all the agreements and conditions precedent which are set forth in Article 8 and Article 10, and Seller will use commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated, and, without limiting the generality of the foregoing, to obtain all consents and authorizations of third parties and to make all filings with, and give all notices to, third parties that may be necessary or reasonably required on its part in order to effect the transactions contemplated hereby.

ARTICLE 7 BANKRUPTCY MATTERS

7.1 Seller and Buyer acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval. Seller and Buyer acknowledge that (a) to obtain such approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best offer possible for the Purchased Assets, including, but not limited to, giving notice of the transactions contemplated by this Agreement to creditors and certain other interested parties as ordered by the Bankruptcy Court, and (b) Seller must pay the Cure Costs and cure all defaults and provide adequate assurance of future performance under the Assumed Contracts and Assumed Leases. Seller and Buyer acknowledge that in connection with Seller's efforts to obtain the highest or otherwise best offer possible for the Purchased Assets, Seller has engaged a financial advisor, and with the assistance of this financial advisor has prepared an executive summary of the Business and actively marketed the sale of the Business from approximately November 20, 2014 to December 20, 2014. Further, the Seller and Buyer acknowledge that the Bankruptcy Court may, but is not required to, order an auction process for the sale of the Purchased Assets.

7.2 Seller has filed or will within 5 business days file with the Bankruptcy Court a motion (the "Sale Motion"), notices and proposed orders, in form and content reasonably satisfactory to Buyer seeking the Bankruptcy Court's issuance of the sale order (the "Sale Order"). The Sale Motion shall include a request that the Sale Order include, among other things:

(a) that this Agreement was negotiated at arms-length, and the Buyer has acted in good faith and without collusion or fraud of any kind;

(b) the Buyer is not an "insider" or "affiliate" of the Seller as those terms are defined in the Bankruptcy Code;

(c) neither the Seller nor the Buyer has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of Section 363(n) of the Bankruptcy Code with respect to the consummation of the purchase transaction;

(d) Buyer is purchasing the Purchased Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protections afforded by Section 363(m) of the Bankruptcy Code;

(e) notice of the sale (and any required sale procedures), as sent to all creditors and interested parties, is sufficient to comply with notice requirements of the Bankruptcy Code;

(f) all objections to the sale free and clear of liens, claims, interests and encumbrances have been withdrawn or overruled, and the Buyer therefore purchases the Purchased Assets free and clear of all liens, claims, interests and encumbrances, including free and clear of the Liens and Liabilities, other than Permitted Liens and Assumed Liabilities; and

(g) Buyer is released from any potential liability in connection with the purchase of the Purchased Assets, other than Permitted Liens and Assumed Liabilities.

7.3 Seller shall serve a copy of the Sale Motion on:

(a) all entities that claim any interest in or Lien (other than Permitted Liens) upon the Purchased Assets;

(b) all parties to Assumed Contracts and Assumed Leases;

(c) all governmental taxing authorities that have or as a result of the sale of the Purchased Assets may have claims, contingent or otherwise, against the Seller;

(d) all parties that filed requests for notices under Bankruptcy Rule 901(b) or were entitled to notice under Bankruptcy Rule 2002;

(e) all creditors or holders of claims (as defined in Section 101(5) of the Bankruptcy Code, whether or not liquidated, contingent, disputed, or unmatured) of the Seller;

(f) all interested governmental, pension, environmental and other regulatory entities;

(g) the Attorney General of the State of Oregon;

(h) the Office of the United States Trustee;

(i) the Internal Revenue Service and any governmental taxing authority that has filed a claim against the Seller; and

(j) all entities that expressed to the Seller an interest in purchasing the Purchased Assets.

7.4 Seller shall provide Buyer with copies of all motions, applications and supporting papers prepared by or on behalf of the Seller (including forms of orders) directly relating to the Purchased Assets or this Agreement prior to the filing thereof in the Bankruptcy Case so as to allow Buyer to provide reasonable comments for incorporation into same.

7.5 The Seller has filed or will within 5 business days file with the Bankruptcy Court a motion seeking approval of a bidding process. The Bankruptcy Court order approving such bidding process shall include the following, without limitation:

(a) If Buyer is not, for any reason, the successful purchaser, Buyer will be entitled to a cash payment in an amount equal to 3% of the total purchase price paid by the successful purchaser (the “Break-Up Fee”) and a return of the Deposit;

(b) Competing bidders will be required to pay the Break-Up Fee and overbid in \$10,000.00 increments above the bid submitted by the Buyer; Buyer shall have the right but not the obligation to overbid competing bids in \$10,000.00 increments;

(c) Competing bidders must demonstrate when bidding the ability to pay the purchase price in cash at the Closing;

(d) Competing bidders (other than the Buyer) will be required to deposit \$150,000.00 cash, and deliver to Seller a signed copy of this Agreement, marked to show such bidder’s proposed changes, in order to confirm a commitment to proceed with the purchase; and

(e) If the Buyer is the successful purchaser, then the Sale Order shall contain, among other things, the provisions set forth above in Section 7.2.

ARTICLE 8 ADDITIONAL AGREEMENTS

8.1 FURTHER ASSURANCES. Subject to the terms and conditions herein provided, the parties hereto shall take or cause to be taken all action and do or cause to be done all things reasonably necessary, proper or advisable under applicable Legal Requirements to consummate and make effective, as soon as reasonably practicable, the transactions contemplated hereby.

8.2 COOPERATION ON TAX MATTERS. The parties shall cooperate, and shall cause their respective representatives to cooperate, in preparing and filing all Tax returns (including amended Tax returns and claims for refund), in handling audits, examinations, investigations, and administrative, court or other Proceedings relating to Taxes, in resolving all disputes, audits and refund claims with respect to such Tax returns and Taxes, and any earlier Tax returns and Taxes of Seller, and in all other appropriate Tax matters.

8.3 NO SUCCESSOR LIABILITY TO EMPLOYEES. Under no circumstances shall Buyer assume or be obligated to pay, and the Purchased Assets, shall not be or become liable for or subject to, any liabilities to the Seller’s Employees arising prior to the Closing Date, including any Liabilities related to Benefit Plans, employment practices, COBRA (except as provided in Section 8.4(f) below), equal employment opportunity, nondiscrimination, harassment, wrongful termination, breach of contract, immigration, wage and hour laws, any other state, federal or local labor and employment laws” Liability under the WARN Act, salaries, vacations, sick pay, incentives, severance pay, bonus, overtime, meal period, pension profit sharing retirement and/or deferred compensation and any other compensation or benefits, other than Assumed Liabilities (the “Employee Claims”), which Employee Claims shall be discharged by Seller pursuant to the Sale Order.

8.4 EMPLOYMENT.

(a) On the Closing Date, Seller shall (x) terminate the employment of all Employees directly employed by Seller and (y) terminate Seller's arrangement with the Agencies (as defined in Section 14.16) to provide such Employees to Seller. Buyer shall offer employment to all Employees (or enter into an arrangement with the Agencies or a similar service provider to provide the services of such Employees) on terms no less favorable in any material respect than the terms currently in effect with respect to such Employees (and which terms shall not be modified so as to be less favorable in any material respect for a period of 12 months following the Closing Date) to commence immediately following the Closing, each such offer contingent upon (i) the Sale Order becoming a Final Order, (ii) the Closing and (iii) the completion of a customary background check, the results of which shall be reasonably satisfactory to Buyer. Except as set forth on Schedule 8.4, Buyer's employment of any individuals previously employed by Seller shall be on an "at will" basis. Employees who accept Buyer's offer of employment and who commence employment with Buyer (either directly or through a third party such as the Agencies) from and after the Closing Date shall be referred to herein as the "Hired Employees."

(b) On the Closing Date, and for a period of at least 12 months thereafter, Buyer shall provide or cause its Affiliates to provide Hired Employees with compensation and employee benefits that are not less favorable in any material respect than the compensation and employee benefits provided to such employees by the Seller immediately prior to the Closing. Each Hired Employee will receive credit for purposes of eligibility to participate, vesting, benefit level and accrual, and all other purposes under each employee benefit plan sponsored by Buyer or its Affiliates (or through the Agencies for the Employees provided by the Agencies) in which such Hired Employee (or the spouse, domestic partner or dependent of such Hired Employee) participates or is eligible to participate on or after the Closing Date (each, a "Buyer Plan") for years of service with the Seller (or any predecessors) prior to the Closing Date, but only to the extent such service was taken into account for such purposes under the analogous Benefit Plan. Buyer will cause each Buyer Plan that is a group health plan (i) to waive any and all pre-existing condition limitations, eligibility waiting periods, actively at work requirements and evidence of insurability requirements with respect to Hired Employees (and their spouses, domestic partners and dependents) to the extent waived, satisfied or not included under the analogous Benefit Plan, and (ii) to recognize for each Hired Employee (and the spouse, domestic partner and dependents of such Hired Employee) for purposes of applying annual deductible, co-payment and out-of-pocket maximums under such Buyer Plan any deductible, co-payment and out-of-pocket expenses paid by such Hired Employee and his or her spouse, domestic partner or dependents under the analogous Benefit Plan during the plan year of such Benefit Plan in which occurs the Closing Date.

(c) With respect to each Hired Employee, Seller hereby waives and releases each such individual from any and all contractual, common law or other restrictions enforceable by Seller on the employment, activities or other conduct of such individuals after their termination of employment with Seller; provided, however, that Seller shall assign to Buyer Seller's rights to all obligations of each Hired Employee not to disclose confidential information relating to the Business and all obligations not to compete with the Business owed to Seller by such Hired Employee.

(d) Nothing herein, express or implied, shall confer upon any Employee any rights or remedies (including any right to employment or continued employment for any specific period) of any nature or kind whatsoever, under or by reason of this Agreement. Under no circumstance shall any individual employed or formerly employed by Seller (or provided to Seller by the Agencies) become an

employee of Buyer unless such individual becomes a Hired Employee. Buyer and Seller agree that the provisions contained herein are not intended to be for the benefit of or otherwise be enforceable by, any third party, including any Employee.

(e) Seller shall retain all Liabilities that are not Assumed Liabilities arising out of the termination of any Employees who are not Hired Employees, including: (i) compliance with the requirements of the WARN Act or under any similar or analogous Legal Requirement having applicability to Seller or the Business; (ii) administration and payment of severance benefits, and if provided, out placement assistance; (iii) accrued salary, vacation and benefits or other payments (other than the Assumed Liabilities); whether or not payable under Contract; and (iv) any other related Liabilities.

(f) Buyer shall be responsible for providing continuation coverage to the extent required by COBRA to those individuals who are "M & A qualified beneficiaries," as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a), with respect to the transactions contemplated in or by this Agreement.

(g) Within 10 business days of the date hereof, Seller shall deliver to Buyer: (i) a loss history for Seller's health insurance for the 24 months prior to the date hereof; and (ii) a detailed report of any individual health insurance claim by an Employee or former employee of Seller which exceeded \$15,000.00 for the 12 month period prior to the date hereof. Notwithstanding anything contained in this Agreement to the contrary, Seller shall not be required to provide any information which would violate HIPAA or any other Legal Requirements.

(h) Except as provided in Section 8.4(a) or to the extent consented to by Seller in writing, Buyer agrees that from the date hereof until the date 12 months after this Agreement is terminated pursuant to Article 13, neither Buyer nor any of its Affiliates shall directly or indirectly solicit for employment or otherwise induce, influence or encourage to terminate employment with Seller, or employ or engage as an independent contractor, any Employee.

8.5 ADEQUATE ASSURANCES REGARDING ASSUMED CONTRACTS AND ASSUMED LEASES.

With respect to each Assumed Contract and each Assumed Lease, Seller and Buyer will use commercially reasonable efforts to provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each such Assumed Contract and Assumed Lease. Buyer and Seller agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that all defaults have been cured and that there has been an adequate demonstration of adequate assurance of future performance under the Assumed Contracts and the Assumed Leases, such as furnishing affidavits, non-confidential financial information or other documents or information for filing with the Bankruptcy Court and making Buyer's and Seller's employees and representatives available to testify before the Bankruptcy Court.

8.6 CURE AMOUNTS. Set forth on **Schedule 1.5(b)** is a list of the costs: (a) that pursuant to Bankruptcy Code Section 365(b) will be required to cure any default on the part of the Seller under the Assumed Contracts and Assumed Leases, which costs must be delivered to the nondebtor under the Assumed Contracts and Assumed Leases, or with respect to which adequate assurance of prompt delivery by Seller must be provided as a prerequisite to the assumption of such Assumed Contracts and Assumed Leases under Bankruptcy Code Section 365(a); (b) that will be necessary to keep the Seller current on any payments due under any Assumed Contract or Assumed Lease as of the Closing Date (the "Cure Costs"). Prior to the Closing, Buyer shall cooperate with Seller to resolve any disputes with the

nondebtor party to any of the Assumed Contracts or Assumed Leases regarding the amount of the Cure Costs. Subject to entry of the Sale Order and it becoming a Final Order, Seller shall pay the Cure Costs designated in accordance with the terms and conditions of any Order approving the assumption and assignment of the Assumed Contracts.

8.7 CONFIDENTIALITY. Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to Buyer pursuant to this Agreement. Buyer further covenants and agrees that if this Agreement is, for any reason, terminated prior to Closing, Buyer will promptly return to the Seller and will not disclose to third parties any confidential information received from the Seller in the course of investigating, negotiating, and performing the transactions contemplated by this Agreement. Buyer's obligations with regard to the Confidentiality Agreement shall terminate as of the Closing.

ARTICLE 9 CONDITIONS TO OBLIGATIONS OF SELLER

Seller's obligations hereunder are subject to the fulfillment or satisfaction, on or before the Closing Date, of each of the following conditions (any one or more of which may be waived by Seller, but only in a writing signed by Seller):

9.1 ACCURACY OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of Buyer set forth in Article 5 shall be true and accurate in every material respect on and as of the Closing with the same force and effect as if they had been made at the Closing, except for changes contemplated by this Agreement and except for those representations and warranties that address matters only as of a particular date (which shall remain true and correct as of such particular date), with the same force and effect as if they had been made at the Closing.

9.2 BUYER'S COVENANTS. Buyer shall have performed and complied in all material respects with all of its covenants contained in Article 8 on or before the Closing.

9.3 COMPLIANCE WITH LAW. There shall be no order, decree, or ruling by any court or governmental agency or threat thereof, or any other fact or circumstance, which would prohibit or render illegal the transactions contemplated by this Agreement.

9.4 GOVERNMENT CONSENTS. There shall have been obtained at or prior to the Closing Date such permits or authorizations, and there shall have been taken such other action, as may be required to consummate the transactions contemplated by this Agreement by any regulatory authority having jurisdiction over the parties and the actions herein proposed to be taken, including but not limited to requirements under applicable federal and state securities laws.

9.5 CONSENTS. Seller and Buyer shall have received either (a) duly executed copies of such consents from parties to the Material Agreements as are required under the terms thereof for such Material Agreements to be assigned and delegated to Buyer hereunder, or (b) the approval of the Bankruptcy Court to assume and assign the Material Agreements.

9.6 CERTIFICATES OF NO DEFAULT. Seller and Buyer shall have received signed certifications from the counterparties to the Material Agreements listed on **Schedule 9.6** to the effect

that, as of 5 business days prior to the Closing Date, there are no uncured defaults or events which, with the giving of required notice or otherwise, might constitute an event of default.

9.7 NO LITIGATION. No litigation or proceeding shall be threatened or pending for the purpose or with the probable effect of enjoining or preventing the consummation of any of the transactions contemplated by this Agreement, or which could be reasonably expected to have a Material Adverse Effect.

9.8 SALE ORDER. The Sale Order shall have been entered.

9.9 EMPLOYMENT OFFERS. Buyer shall have made offers of employment to all Employees in accordance with Section 8.4(a).

9.10 BUYER CLOSING DELIVERABLES. Seller shall have received from Buyer those documents and deliverable set forth in Section 3.3 (including executed copies of those items listed therein that call for Buyer's signature).

ARTICLE 10 CONDITIONS TO OBLIGATIONS OF BUYER

Buyer's obligations hereunder are subject to the fulfillment or satisfaction, on or before the Closing Date, of each of the following conditions (any one or more of which may be waived by Buyer, but only in a writing signed by Buyer):

10.1 ACCURACY OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of Seller set forth in Article 4 (as qualified by the Seller Disclosure Schedule) shall be true and accurate in every material respect on and as of the Closing with the same force and effect as if they had been made at the Closing, except for changes contemplated by this Agreement and except for those representations and warranties that address matters only as of a particular date (which shall remain true and correct as of such particular date), with the same force and effect as if they had been made at the Closing.

10.2 COVENANTS. Seller shall have performed and complied in all material respects with all of its respective covenants contained in Article 6 on or before the Closing.

10.3 ABSENCE OF MATERIAL ADVERSE CHANGE. There shall not have occurred any event or circumstance which has, or is reasonably likely to have, a Material Adverse Effect upon the Business.

10.4 COMPLIANCE WITH LAW. There shall be no order, decree, or ruling by any court or governmental agency or threat thereof, or any other fact or circumstance, which would prohibit or render illegal the transactions contemplated by this Agreement.

10.5 ASSUMED CONTRACTS AND ASSUMED LEASES. The conditions of Section 1.5 shall be satisfied, which shall include the receipt by Buyer of any Estoppel Certificate requested by Buyer pursuant to Section 1.5(c), except to the extent that the failure to obtain such Estoppel Certificate does not materially adversely affect the Business.

10.6 REQUIRED EMPLOYEES. The employees listed in **Schedule 10.6** shall commit to Buyer to become Hired Employees as of the Closing Date.

10.7 SELLER CLOSING DOCUMENTS. Buyer shall have received from Seller those documents set forth in Section 3.2 (including executed copies of those items listed therein that call for Seller's signature), above.

10.8 CONSENTS. Seller and Buyer shall have received either (a) duly executed copies of such consents from parties to the Material Agreements as are required under the terms thereof for such Material Agreements to be assigned and delegated to Buyer hereunder, or (b) the approval of the Bankruptcy Court to assume and assign the Material Agreements.

10.9 CERTIFICATES OF NO DEFAULT. Seller and Buyer shall have received signed certifications from the counterparties to the Material Agreements listed on **Schedule 9.6** to the effect that, as of 5 business days prior to the Closing Date, there are no uncured defaults or events which, with the giving of required notice or otherwise, might constitute an event of default.

10.10 NO LITIGATION. No litigation or proceeding shall be threatened or pending for the purpose or with the probable effect of enjoining or preventing the consummation of any of the transactions contemplated by this Agreement, or which could be reasonably expected to have a Material Adverse Effect.

10.11 SALE ORDER; FINAL ORDER. The Sale Order shall have been entered, and shall contain, among other things, the provisions described in Section 7.2, and shall have become a Final Order in a form reasonably satisfactory to Buyer and consistent in all material respects with the terms of this Agreement as it relates to the sale of the Business.

ARTICLE 11 POST CLOSING COVENANTS

11.1 TRANSACTION COSTS. Each party shall pay and be solely responsible for the costs and expenses of its respective counsel and the other costs and fees incurred by such party in connection with negotiating and closing the transactions contemplated by this Agreement; provided, however, that upon Closing (if and only if the Closing occurs), Buyer shall pay to Seller the lesser of (a) \$150,000 or (b) one-half of the aggregate expenses incurred by Seller and Ignition Venture Partners in connection with the Agreement and the transactions contemplated thereby (the "Reimbursement Costs").

11.2 ACCESS TO BOOKS AND RECORDS. Upon request from time to time after the Closing, each party shall provide the other party and its representatives reasonable access to the books and records of the Business, together with reasonable usage of photocopying, telephone, fax and other use of such party's facilities, with respect to the period prior to the Closing in order to enable such party (a) to prepare for and complete financial statements and any audits by its independent auditors, auditors of its lenders and other representatives income Tax returns, (b) to prepare and defend any tax audits, (c) to assert and defend any claims with respect to the Business arising prior to the Closing, and (d) any other reasonable purpose.

ARTICLE 12

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNITY

12.1 SURVIVAL. The representations, warranties and covenants of Seller and Buyer contained in this Agreement, or in any certificate or schedule or instrument delivered pursuant hereto, shall survive the Closing for a period of 1 year (the “Survival Period”). Accordingly, except for claims of fraud, the parties agree that all claims for breach of such representations, warranties or covenants hereunder shall expire unless a written claim therefor is presented hereunder prior to the expiration of such one-year Survival Period; provided that if the covenant which is alleged to have been breached is a covenant that is required to be performed in the first instance after the Closing Date, then the Survival Period for any breach of such covenant shall be 1 year from the date on which the obligations described in such covenant were first required to be performed.

12.2 ESCROW PERIOD. The Escrow Amount shall be delivered to Escrow Agent on the Closing Date and shall be distributed by Escrow Agent within 5 business days after the last day of the Survival Period (such period referred to herein as the “Escrow Period”), provided, however, that the portion of the Escrow Amount which is necessary to satisfy any unsatisfied claims specified in any Indemnatee Certificate delivered by an Indemnatee to an Indemnifying Party prior to termination of the Escrow Period or updated thereafter, shall not be paid and shall not be issued, as applicable, until such claims have been finally resolved, or, if earlier, until paid or issued in accordance with Section 12.7 below.

12.3 INDEMNIFICATION BY SELLER. Subject to Section 12.7, Seller shall indemnify, defend (with counsel of its selection), and hold Buyer and its successors, assigns, partners, employees, and other agents (collectively, the “Buyer Indemnitees”), harmless from and against any and all liabilities, obligations, losses, claims, damage, cost, charges or other expenses of every kind and character (including but not limited to attorneys’ fees and litigation costs) (collectively, “Damages”), which may accrue or be sustained by any Buyer Indemnatee arising out of or as a result of (a) any pre-Closing Taxes, (b) any Liabilities of Seller (other than the Assumed Liabilities), and (c) any breach of the representations, warranties, or covenants of Seller contained in this Agreement.

12.4 INDEMNIFICATION BY BUYER. Subject to Section 12.7, Buyer shall indemnify, defend (with counsel of its selection), and hold Seller and its successors, assigns, partners, employees, and other agents (collectively, the “Seller Indemnitees” and together with the Buyer Indemnitees, the “Indemnitees”), harmless from and against any and all Damages which may accrue or be sustained by any Seller Indemnatee arising out of or as a result of (a) Assumed Liabilities and (b) any breach of the representations, warranties, or covenants of Buyer contained in this Agreement.

12.5 SATISFACTION OF INDEMNIFICATION OBLIGATIONS OF SELLER. In the event the Buyer Indemnitees are entitled to recover any Damages from Seller pursuant to this Article 12, Escrow Agent shall distribute an amount equal to such damages to the Buyer Indemnitees from the Escrow Amount.

12.6 INDEMNITY PROCEDURES.

(a) **DELIVERY OF CERTIFICATE.** In the event that at any time or from time to time after the Closing Date an Indemnatee shall sustain Damage of any nature whatsoever against which such Indemnatee is indemnified under this Agreement, such Indemnatee shall deliver to Seller (if such Indemnatee is a Buyer Indemnatee) or to Buyer (if such Indemnatee is a Seller Indemnatee) (each, an

“Indemnifying Party”), in writing, promptly, on or before the last day of the Survival Period, a certificate signed by Indemnatee (a “Indemnatee Certificate”):

(i) Stating the aggregate amount of the Indemnatee’s Damages or an estimate thereof, in each case to the extent known or determinable at such time; and

(ii) Specifying in reasonable detail the individual items of such Damages included in the amount so stated, the date each such item was paid or properly accrued or arose, the nature of the misrepresentation, breach or claim to which such item is related, and the specific Section of this Agreement alleged to have been violated.

(b) **RESOLUTION OF CLAIMS.** If an Indemnifying Party objects in writing to any claim or claims made in any Indemnatee’s Certificate, then the Indemnatee shall have 30 days to respond in a written statement to the objection. If after such 30-day period there remains a dispute as to any claims, the Indemnifying Party and Indemnatee shall attempt in good faith for 30 days to agree upon the rights of the respective parties with respect to each of such claims. If the Indemnifying Party and Indemnatee should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties. If no such agreement can be reached after good faith negotiation, either the Indemnifying Party or Indemnatee may commence an action to pursue such claim.

12.7 CERTAIN LIMITATIONS.

(a) In no event shall the aggregate indemnity payments made by an Indemnifying Party exceed the Escrow Amount.

(b) An Indemnifying Party shall not be liable to an Indemnatee for indemnification under this Article 12 until the aggregate amount of all Damages in respect of indemnification exceeds \$50,000 (the “Basket”), in which event the Indemnifying Party shall be required to pay or be liable all Damages from dollar zero. With respect to any claim as to which an Indemnatee may be entitled to indemnification under this Article 12, the Indemnifying Party shall not be liable for any individual or series of related Damages which do not exceed \$2,500, and no such claim shall be counted for determining whether the Basket has been met.

(c) Payments by an Indemnifying Party under Section 12.2 or Section 12.3 in respect of any Damages shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnatee in respect of any such claim. The Indemnitees shall use their commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Damages prior to seeking indemnification under this Agreement.

(d) In no event shall either the Buyer or the Seller be liable to any Indemnatee for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

12.8 EXCLUSIVE REMEDY. Except for a claim based upon fraud, the rights of indemnification set forth in this Article 12 shall be the sole and exclusive remedy of the Indemnitees for any breach of the other party’s representations, warranties, or covenants under this Agreement and the assertion of any claim relating to liabilities of the Business with respect to the conduct of the Business

prior to the Closing, the Excluded Liabilities, or otherwise relating to the subject matter of this Agreement.

ARTICLE 13 TERMINATION

13.1 TERMINATION. This Agreement may be terminated at any time prior to the Closing only as follows:

- (a) By the mutual written consent of the Buyer and Seller;
- (b) By either the Buyer or the Seller, immediately upon the occurrence of any of the following events:
 - (i) The Bankruptcy Court approves an Alternative Transaction, or an Alternative Transaction is consummated;
 - (ii) The Closing does not occur on or before 90 days following the Petition Date (the “Outside Date”); provided, however, that the right to terminate this Agreement under this Section 13.1(b)(ii) shall not be available to any party whose breach (or whose Affiliate’s breach) of this Agreement has resulted in the failure of the Closing to occur on or before the Outside Date;
- (c) By either Buyer or Seller, if any Governmental Authority shall have issued any permanent Order enjoining or otherwise prohibiting the transactions contemplated hereby and all appeals and means of appeal therefrom have been exhausted;
- (d) By Seller, if Buyer shall have materially breached any of its or his representations, warranties, covenants or agreements contained herein and such breach shall not have been cured within 15 days after receipt by the Buyer from Seller of written notice of such breach (provided, however, that no such cure period shall be available or applicable to any such breach which by its nature cannot be cured) and if not cured within the timeframe above and at or prior to the Closing, such breach (individually or together with all other breaches by the Buyer) would result in the failure of any of the conditions set forth in Article 9 to be satisfied;
- (e) By Buyer, if Seller shall have materially breached any of its representation, warranty, covenant or agreement contained herein and such breach shall not have been cured within 15 days after receipt by the Seller from Buyer of written notice of such breach (provided, however, that no such cure period shall be available or applicable to any such breach which by its nature cannot be cured) and if not cured within the timeframe above and at or prior to the Closing, such breach (individually or together with all other breaches by the Seller) would result in the failure of any of the conditions set forth in Article 10 to be satisfied;
- (f) By Seller, if any of the conditions specified in Article 9 have not been met or waived prior to such time as such condition can no longer be satisfied, in which case Seller shall be entitled to receive the Deposit; or
- (g) By Buyer, if any of the conditions specified in Article 10 shall not have been met or waived prior to such time as such condition can no longer be satisfied.

13.2 EFFECT OF TERMINATION. The right of termination provided in Section 13.1 is in addition to any other rights and remedies a party may have under this Agreement, applicable Legal Requirements or otherwise. In the event of termination of this Agreement as provided in Section 13.1, this Agreement shall become void and there shall be no liability or obligation on the part of Buyer, Seller, or their respective officers, directors, shareholders or Affiliates; provided, however, that (a) the provisions of Section 8.7, this Section 13.2, Section 13.3 and Article 14 shall remain in full force and effect and survive any termination of this Agreement and (b) nothing herein shall relieve any party hereto from liability in connection with any willful breach of such party's representations, warranties, covenants or agreements contained herein.

13.3 DISBURSEMENT OF DEPOSIT.

(a) **DISBURSEMENT OF DEPOSIT TO SELLER.** In the event that (i) the Agreement is terminated by Seller in accordance with Section 13.1(d) or 13.1(f), or (ii) (A) this Agreement is not earlier terminated in accordance with Section 13.1(a), 13.1(b)(i), 13.1(c), 13.1(e) or 13.1(g), (B) the conditions to Closing set forth in Article 10 have been and remain satisfied (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment of those conditions), (C) the Seller confirms in writing to Buyer that it stands ready to proceed with the Closing on or before the Outside Date and (D) Buyer fails to complete the Closing on or before the Outside Date by, among other things, failing to pay the Escrow Amount, Closing Payment and/or Reimbursement Costs pursuant to Section 2.1, then the Buyer and Seller shall jointly instruct the Escrow Agent to distribute to the Seller the entire Deposit within 5 business days following the instruction date.

(b) **DISBURSEMENT OF DEPOSIT UPON CLOSING.** If the Closing is completed on or before the Outside Date, the Buyer shall instruct the Escrow Agent to retain the Deposit in partial offset against the Escrow Amount, to be included in the Escrow Amount and disbursed accordingly.

(c) **DISBURSEMENT OF DEPOSIT TO BUYER.** In the event that the Closing has not occurred on or before the Outside Date under any circumstance not described in Section 13.3(a) and this Agreement has been validly terminated pursuant to Section 13.1, then the Buyer and Seller will jointly instruct the Escrow Agent to distribute to Buyer the entire Deposit within 5 business days following the instruction date.

(d) **NO EXCLUSIVE REMEDY.** The Seller's rights provided in this Section 13.3 are not exclusive, and the Seller's receipt of the Deposit hereunder does not preclude the Seller's exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, under this Agreement or under any other agreement between the parties hereto or otherwise.

**ARTICLE 14
MISCELLANEOUS**

14.1 NOTICES. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to be given and received (a) when delivered in person, (b) on the date on which transmitted by facsimile or e-mail, *provided that* there is a confirmation of transmission; (c) on the 3rd business day after the date on which deposited in the United States mail in a sealed envelope, postage prepaid, or (d) on the next business day after the date on which deposited in a sealed envelope with a nationally-recognized overnight courier (*e.g.*, Federal Express or DHL), freight prepaid, addressed to the party for whom intended at the address or facsimile number set forth for such party on

the signature page, below, or such other address or facsimile number, notice of which is provided in a manner permitted by this Section 14.1.

14.2 COOPERATION ON TAX MATTERS. After the Closing, Seller and Buyer shall cooperate with each other in connection with any official inquiry, audit, determination or proceeding affecting the liability of either of them for Taxes and shall make available to each other within a reasonable period of time, at no cost to the other (except as provided in this Section 14.2), any documents, correspondence, reports, books, records, files, or data of either of them and any other materials bearing on such inquiry, audit, examination, proceeding as such other party may reasonably request, provided, however, that (a) either party may charge the other party for any actual out-of-pocket costs or expenses incurred by it in assisting the other party hereunder, and (b) no party shall have any obligation to the other party pursuant to this Section 14.2 after the 36-month anniversary of the Closing Date.

14.3 CONSULTATIONS. The parties each acknowledge that they have consulted with their respective accounting and tax advisors in connection with the accounting and tax treatment for this transaction, that each such party will bear all risk in connection with its accounting and tax treatment of the transactions contemplated hereby and that no party is relying on any other party in connection with the same.

14.4 FORCE MAJEURE. Neither party shall be liable for delay or failure to perform, in whole or in part, by reason of contingencies beyond the reasonable control of the party affected, whether herein specifically enumerated or not, including among others, acts of God, war, acts of war, revolution, civil commotion, terrorism, riots, acts of public enemies, blockage or embargo, delays of carriers, car shortage, fire, explosion, breakdown of equipment, strike, lockout, labor dispute, casualty or accident, earthquake, epidemic, flood, cyclone, tornado, hurricane or other windstorm, delays of vendors or other contingencies interfering with production or with customary or usual means of transportation, or by reason of any law, order, proclamation, regulation, ordinance, demand, requisition or requirement or any other act of any governmental authority, local, state or federal, including court orders, judgments or decrees, or any other cause whatsoever, whether similar or dissimilar to those above affected; provided, however, that the party so affected shall promptly give notice to the other party whenever such contingency or other act becomes reasonably foreseeable and shall use its best efforts to overcome the effects of the contingency as promptly as possible. Neither party, however, shall be required to resolve a strike, lockout or other labor problem in a manner which it alone does not deem proper and advisable.

14.5 WAIVER OF COMPLIANCE. Any failure of Seller, on the one hand, or Buyer, on the other, to comply with any provision of this Agreement may be expressly waived in writing by Buyer or Seller, respectively, but such waiver or failure to insist upon strict compliance with such provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself.

14.6 ATTORNEYS' FEES. If any action or proceeding is commenced to construe or enforce this Agreement or the rights and duties of the parties hereunder, then the party prevailing in such action shall be entitled to recover its costs and attorneys' fees in such action or proceeding, as well as all costs and fees of enforcing or appealing any judgment entered therein.

14.7 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The respective representations and warranties of each party contained herein shall not be deemed waived or otherwise affected by any investigation made by or on behalf of the other party and such representations and warranties shall survive the Closing and the consummation of the purchase of the Assets as contemplated hereby as provided in Article 12. All statements contained in this Agreement or in any schedule, exhibit, certificate, list, or other document delivered pursuant hereto shall be deemed representations or warranties, as the case may be (as such terms are used in this Agreement), of the party making such statements.

14.8 ASSIGNMENT; SUCCESSORS AND ASSIGNS. Except as otherwise provided herein, each party agrees that it will not assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any right or obligation under this Agreement; notwithstanding the foregoing, Buyer may assign its rights hereunder to an Affiliate without Seller's consent, provided that any such assignment shall not relieve Buyer of its obligations hereunder. Any purported assignment, transfer, or delegation in violation of this Section shall be null and void. Subject to the foregoing limits on assignment and delegation, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Except for those enumerated above, this Agreement does not create, and shall not be construed as creating, any rights or claims enforceable by any Person or entity not a party to this Agreement.

14.9 GOVERNING LAW; DISPUTE RESOLUTION.

(a) Subject to Section 14.9(b), the validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon and the Bankruptcy Code, to the extent applicable. Each party hereby consents to the jurisdiction of the courts of the State of Oregon for purposes of construing and enforcing the rights created herein.

(b) During the pendency of the Bankruptcy Case, any proceeding concerning the validity, interpretation, enforceability, and performance of this Agreement may only be brought against any of the parties in the Bankruptcy Court, and the parties consent to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to the venue laid therein.

(c) **COUNTERPARTS; FACSIMILE SIGNATURES.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A copy of this Agreement that is executed by a party and delivered by facsimile shall be binding on such party to the same extent as a copy hereof containing that party's original signature. Any party that executes and delivers this Agreement by facsimile shall, upon request from the other party, execute and deliver a copy hereof containing that party's original signature.

14.10 HEADINGS. The headings of the Sections and Articles of this Agreement are for reference purposes only and shall not constitute a part hereof or affect the meaning or interpretation of this Agreement.

14.11 ENTIRE AGREEMENT. This Agreement, including the Disclosure Schedule and other documents referred to herein, (a) represents the entire understanding of the parties, and supersedes and replaces all prior and contemporaneous understandings, whether oral or written, regarding the subject

matter hereof, and (b) may not be modified or amended, except by a written instrument executed after the date hereof by the party sought to be charged by such modification or amendment.

14.12 SEVERABILITY. If any provision of this Agreement, or the application thereof to any Person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other Persons, places, and circumstances shall remain in full force and effect.

14.13 RULES OF CONSTRUCTION. The parties acknowledge that each party has been represented by counsel and has read and negotiated the language used in this Agreement. The parties agree that, because all parties participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes ambiguous language in favor of or against any party by reason of that party's role in drafting this Agreement.

14.14 ADDITIONAL DOCUMENTS. Each of the parties agrees, without further consideration, to execute and deliver such other documents and take such further action as may be reasonably required to effectuate the provisions of this Agreement.

14.15 EXHIBITS. All Exhibits attached hereto shall be deemed to be a part of this Agreement and are fully incorporated in this Agreement by this reference.

14.16 CERTAIN DEFINITIONS. For purposes of this Agreement:

(a) **"AFFILIATE"** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(b) **"AGENCIES"** shall mean Volt Services Group, a division of Volt Management Corp., Express Services, Inc., dba Express Employment Professionals, TriNet Group, Inc. (or an affiliate thereof) and CampusPoint Corporation.

(c) **"CLOSING WORKING CAPITAL"** means (i) the Current Assets of the Seller, less (ii) the Current Liabilities of the Seller, determined as of the open of business on the Closing Date and calculated pursuant to the form of Estimated Closing Working Capital Statement set forth in **Schedule 2.2(a)(ii)**.

(d) **"COBRA"** means Section 4980B of the Internal Revenue Code of 1986, as amended (and the regulations and rulings issued thereunder), Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (and the regulations and rulings issued thereunder), and similar provisions of applicable state Legal Requirements.

(e) **"CONFIDENTIALITY AGREEMENT"** means that certain Non-Disclosure and Non-Use Agreement, dated as of August 8, 2014, by and between Buyer and Seller.

(f) **"CURRENT ASSETS"** means cash and cash equivalents, accounts receivable, inventory and prepaid expenses, lease and similar deposits (whether current or not) with respect to any

real estate leases or other Assumed Contracts, determined in accordance with GAAP applied in a manner consistent with the Seller's past practice.

(g) **"CURRENT LIABILITIES"** means accounts payable, accrued Taxes, accrued expenses and Accrued Vacation, determined in accordance with GAAP applied in a manner consistent with the Seller's past practice; provided, however, that Current Liabilities shall not include indebtedness for borrowed money, deferred revenue, deferred rent, and other non-cash GAAP accruals, and any current liabilities that are not being assumed by Buyer.

(h) **"EMPLOYEE"** means any full or part-time employee or independent contractor of Seller as of the date of this Agreement. For the purposes of this Agreement, the term "Employee" shall also refer to any full or part-time employee of the Agencies supplied by the Agencies to perform various job positions pursuant to their respective agreements with Seller.

(i) **"FINAL ORDER"** means an action taken or Order issued by the applicable Governmental Authority, including the Sale Order issued by the Bankruptcy Court, as to which: (i) no request for stay of the action or Order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or Order, protest of any kind, is pending before the Governmental Authority and the time for filing any such petition or protest is passed, including any extensions thereof; (iii) the Governmental Authority does not have the action or Order under consideration or review on its own motion and the time for such reconsideration or review has passed, including any extensions thereof; and (iv) the action or Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof.

(j) **"GAAP"** means United States generally accepted accounting principles in effect from time to time.

(k) **"FORMER EMPLOYEE"** means any full or part-time employee or independent contractor formerly employed by Seller that is not a current Employee as of the date of this Agreement.

(l) **"GOVERNMENTAL AUTHORITY"** shall mean (1) the Bankruptcy Court, and (2) any:

(i) Nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature;

(ii) Federal, state, local, municipal, foreign or other government;

(iii) Governmental or quasi governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Entity and any court or other tribunal);

(iv) Multinational organization or body; or

(v) Individual, entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

(m) “**KNOWLEDGE**,” with respect to a party, means the knowledge of such party, in the case of an individual, or any officer or director of such party, in the case of an entity, and, in each case, such knowledge as would be imputed to such persons upon due inquiry of Seller’s employees and documentation.

(n) “**LEGAL REQUIREMENT**” means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Order, or other requirement or rule of law of any Governmental Authority.

(o) “**LIABILITY**” means any debt, loss, claim (as defined in section 101(5) of the Bankruptcy Code), damage, demand, fine, judgment, penalty, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, asserted, unasserted, accrued or unaccrued; matured or unmatured, determined or determinable, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability, successor liability or otherwise)” and including all costs and expenses relating thereto (including fees, discounts and expenses of legal counsel, experts, engineers and consultants and costs of investigations).

(p) “**LIEN**” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

(q) “**MATERIAL ADVERSE EFFECT**” means any circumstance, change in, or effect on a party, its subsidiaries, and its business, taken as a whole, that (i) either (A) is materially adverse to the operations, assets or liabilities (including contingent liabilities), earnings or results of operations, the business (financial or otherwise) of such party and its subsidiaries, taken as a whole, or (B) would reasonably be expected to prevent the ability of such party to consummate the transactions contemplated by this Agreement, and (ii) is not cured within a reasonable period of time following notice from the party claiming the occurrence or circumstance that is materially adverse as to the business, properties, assets, liabilities, operations, operating condition (financial or otherwise) of the party; *provided, however*, that such term shall not include any circumstance or change related to (s) general economic or political conditions, (t) conditions generally affecting the industries in which the Business operates, (u) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (v) any matter of which Buyer is aware on the date hereof; (w) any changes in applicable Legal Requirements or accounting rules (including GAAP); (x) the announcement, pendency or completion of the Bankruptcy Case or the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Seller and the Business (y) any act of God, war, terrorism, or other similar event beyond the control of the party that does not directly and peculiarly impact the assets or premises of the party, or (z) credit markets, securities markets or the economy, unrelated to any event that would otherwise constitute a Material Adverse Effect on the party.

(r) “**ORDER**” means any decree, writ, assessment, award, decision, injunction, judgment, order, ruling, subpoena, verdict or arbitration award entered, issued, made, or rendered by any Governmental Authority.

(s) **“PERMITTED LIEN”** means (i) Liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures, and (ii) mechanics’, carriers’, workmen’s, repairmen’s or other like Liens arising or incurred in the ordinary course of business.

(t) **“PERSON”** shall include any individual, partnership, joint venture, corporation, trust, unincorporated organization, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary, or other capacity.

(u) **“PRE-CLOSING PERIOD”** means, with respect to the Seller and its subsidiaries, any taxable year or period that ends on or before the Closing Date and, in the case of any straddle period, the portion of such period ending on and including the day prior to the Closing Date.

(v) **“PRE-CLOSING TAXES”** shall mean any Taxes for which the Seller or its Subsidiaries is or could be liable with respect to (i) any Pre-Closing Period (and in case of any straddle period, Seller’s portion of the straddle period), (ii) pursuant to Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Tax law), or by reason of having been a member of any consolidated, combined or unitary group on or prior to the Closing Date, (iii) resulting from the Transaction (including any Transfer Taxes) and (iv) pursuant to any contractual agreement entered into on or before the Closing Date or as a transferee or successor, if the event giving rise to such liability occurred prior to the Closing Date, in each case together with any interest, penalties and additions to Tax with respect to any of the foregoing and any Losses incurred in connection with any of the foregoing.

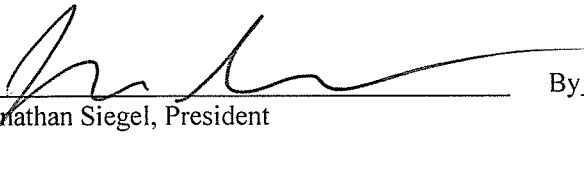
(w) **“TAX”** shall mean any tax (including any income tax, franchise tax, capital gains tax, estimated tax, gross receipts tax, value added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, occupation tax, inventory tax, occupancy tax, withholding tax or payroll tax), levy, assessment, tariff, impost, imposition, toll, duty (including any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty or interest), (a) imposed, assessed or collected by or under the authority of any Governmental Authority, or (b) payable pursuant to any tax sharing agreement or similar contract.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement as of the date first written above.

“BUYER:”

DELIVERED.IO, INC., a Delaware corporation

By 
Jonathan Siegel, President

Notices:

Jonathan Siegel
548 Market Street, #7142
San Francisco, CA 94104
Email: jonathan@siegel.io

with a copy to:

Reicker, Pfau, Pyle & McRoy LLP
ATTN: Fernando Velez, Jr., Esq.
1421 State Street, Suite B
Santa Barbara, CA 93101
Facsimile No.: (805) 966-3320
Email: fvelez@rpppmh.com

“SELLER:”

EARTH CLASS MAIL CORPORATION, an Oregon corporation

By _____
James L. Wilson, President

Notices:

Jim Wilson
9450 SW Gemini Dr.
ECM #101
Beaverton, OR 97008
Email: Jim.Wilson@earthclassmail.com

with a copy to:

Perkins Coie, LLP
ATTN: Brentley M. Bullock
1120 NW Couch Street, 10th Floor
Portland, OR 97209
Facsimile No.: (503) 346-2020
Email: bbullock@perkinscoie.com

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement as of the date first written above.

“BUYER:”

DELIVERED.IO, INC., a Delaware corporation

By _____
Jonathan Siegel, President

“SELLER:”

EARTH CLASS MAIL CORPORATION, an Oregon corporation

By  _____
James L. Wilson, President

Notices:

Jonathan Siegel
548 Market Street, #7142
San Francisco, CA 94104
Email: jonathan@siegel.io

Notices:

Jim Wilson
9450 SW Gemini Dr.
ECM #101
Beaverton, OR 97008
Email: Jim.Wilson@earthclassmail.com

with a copy to:

Reicker, Pfau, Pyle & McRoy LLP
ATTN: Fernando Velez, Jr., Esq.
1421 State Street, Suite B
Santa Barbara, CA 93101
Facsimile No.: (805) 966-3320
Email: fvelez@rppmh.com

with a copy to:

Perkins Coie, LLP
ATTN: Brentley M. Bullock
1120 NW Couch Street, 10th Floor
Portland, OR 97209
Facsimile No.: (503) 346-2020
Email: bbullock@perkinscoie.com

[Signature Page to Asset Purchase Agreement]

CONFIDENTIAL

SELLER DISCLOSURE SCHEDULE

February 13, 2015

This Seller Disclosure Schedule (this “Seller Disclosure Schedule”) is provided in connection with that certain Asset Purchase Agreement, dated as of February 13, 2015 (the “Agreement”), by and between Delivered.io, Inc., a Delaware corporation (the “Buyer”), and Earth Class Mail Corporation, an Oregon corporation, in anticipation of it becoming a Debtor in the United States Bankruptcy Court for the District of Oregon (the “Seller”).

Capitalized terms used in this Seller Disclosure Schedule and not defined herein shall have the meanings set forth in the Agreement, unless the context indicates otherwise.

The disclosure set forth in any particular section or subsection of this Seller Disclosure Schedule shall be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties of the Seller that are set forth in the corresponding section or subsection of the Agreement and (b) any other representations and warranties of the Seller that are set forth in the Agreement if such matter disclosed relates to more than one representation and warranty and the level of particularity and manner of the disclosure of the matter expressly disclosed in one section or subsection of the Seller Disclosure Schedule would make a reasonable person aware that such disclosure is relevant to such other section or subsection.

* * *

CONFIDENTIAL

Schedule 1.4(a)
Accounts Payable

Vendor Name	Total Amount (\$)
Amazon	5,236.17
230 PAS L.L.C.	2,539.30
BankServ	7,270.24
Chelsea Cleaning Services, Inc.	163.32
Dell Business Credit	(118.68)
Endicia USPS Postage	1,500.00
Express Services GA	7,451.62
Fed Ex	4,514.90
Google	500.00
Provantage	10,130.35
Saitech	3,404.31
Sprint	113.68
USPS CAPS fee	905.00
Volt Management Corp.	1,840.26
Westmark Industries Inc.	319.90
Perkins Coie LLP	160,000.00*

*Reflects an estimated amount.

CONFIDENTIAL

Schedule 1.5(a)

Material Agreements

Microsoft BizSpark Startup Agreement by and between Microsoft Corporation and the Seller, dated July 2012, as amended by Graduation Amendment for Microsoft BizSpark Startup Program and related End User License Agreement (the “BizSpark License”).

PrimeOCR Software License Agreement by and between Prime Recognition Corporation and the Seller, dated February 9, 2015 (the “Prime OCR License”).

Services Contract for Document & Data Processing by and between iBridge LLC and the Seller, dated October 15, 2008.

Lease Agreement by and between Baron Messenger and the Seller and Hot Shot Delivery, dated as of September 20, 2010 (382 NE 191st Street, Miami, Florida 33179).

Lease Agreement by and between Sunrise Delivery and the Seller and Hot Shot Delivery, dated as of September 20, 2010 (538 W. 21st Street, Houston, Texas 77008).

Lease Agreement by and between Chicago Messenger and the Seller and Hot Shot Delivery, dated as of September 20, 2010 (1608 S. Ashland Ave., Chicago, Illinois 60608-2013).

License Agreement by and between Flynn Realty Services, LLC and the Seller, dated October 2009 (427 N. Tatnall Street, Wilmington, Delaware 19801).

Standard Form of Store Lease by and between 230 PAS (15 (Cliff)) L.L.C. and 230 PAS (RRPIII) LLC and the Seller, dated April 2008 (228 Park Avenue South, New York, New York 10003).

Lease Agreement by and between Merrill Place LLC and the Seller, dated October 4, 2007 (93 South Jackson Street, Seattle, Washington 98104). *[Note: the Seller is currently negotiating a lease in a different location. The letter of intent is being finalized.]*

Office Lease Agreement by and between Nimbus Center, LLC and the Seller, dated December 19, 2012 (9450 SW Gemini Drive, Beaverton, Oregon 97008).

Standard Industrial/Commercial Multi-Tenant Lease - Net by and between Santa Monica Center Ltd. and the Seller, dated May 27, 2008 (8605 Santa Monica Blvd., West Hollywood, California 90069), as amended.

Retail Lease by and between Flatiron Associates I and the Seller, dated May 16, 2008, as amended by the First Amendment to Lease dated December 2, 2014 (548 Market Street, San Francisco, California 94104).

Employment Agreement by and between James Wilson and the Seller, dated September 24, 2014.

CONFIDENTIAL

Employment Agreement by and between Stacey Lee and the Seller, dated September 24, 2014.

Various widely-available commercial software contracts for software used by the Seller in the Business, including, but not limited to, Kayako Fusion Customer Support Ticketing, Microsoft Visual Studio Premium with MSDN, McAfee Secure and Microsoft Office and related products.

CONFIDENTIAL

Schedule 1.5(b)

Cure Costs

None.

CONFIDENTIAL

Schedule 4.1

Organization of Seller

The Seller is qualified to do business as a foreign corporation in California, New York and Washington. *[Note: New York and Washington qualifications are in the process of being reactivated. It is expected this will be completed before Closing.]*

CONFIDENTIAL

Schedule 4.2

Authority and Consents

The Board of Directors of the Seller has authorized the Seller to enter into this Agreement. The Board of Directors of the Seller may be required to take certain additional actions to the extent required by the Bankruptcy Court in order to consummate the transactions contemplated by the Agreement.

CONFIDENTIAL

Schedule 4.3

No Violation

The Seller has licensed certain Intellectual Property Rights with regard to Microsoft Excel spreadsheet models used to model the Seller's financial performance and track the Seller's capitalization (the "Financial Model IP"), from Mitchell Hymowitz, a former consultant and CFO of the Seller. Under the terms of Mr. Hymowitz' Proprietary Information, Invention Assignment and Non-Solicitation Agreement, Mr. Hymowitz granted Seller a fully-paid, non-exclusive and non-transferable license to the Financial Model IP to the extent that Mr. Hymowitz used the Financial Model IP while performing services for the Seller (the "Financial Model IP License"). There can be no assurance that the Financial Model IP License will be assignable to Buyer under the Agreement, even after giving effect to the Sale Order.

The Seller was granted a license to use certain Microsoft software without charge as a result of Seller's participation in the Microsoft BizSpark Startup Program (as defined above, the BizSpark License). Although software is readily available, there can be no assurance that the BizSpark License will be assignable to the Buyer under the Agreement without consent, even after giving effect to the Sale Order.

The Seller disclaims the last sentence of Section 4.3 of the Agreement to the extent that any instrument or agreement which restricts or otherwise limits the Seller's right to transfer the Purchased Assets will not, in fact, prohibit such transfer after giving effect to the Sale Order.

CONFIDENTIAL

Schedule 4.5(b)

Fundamental Intellectual Property Representations

(i)(A)

The proprietary Iris platform is the software platform used by the Seller for substantially all customer and internal facing aspects of the Seller's services. (See **Appendix A** attached hereto for additional information related to the Iris platform.)

Various widely-available, commercial Microsoft support and development products, including, but not limited to, Microsoft Visual Studio Premium with MSDN, Microsoft SQL Server, Microsoft System Center, Microsoft Windows Server and Windows.

The Prime OCR License.

The BizSpark License.

CONFIDENTIAL**(i)(B)**

Name	License	Usage	Distributed	Version
7-Zip	LGPL 2.1	Compression for build and deployment tools.	No	9.20.0.0
7ZipSharp	LGPL 2.1	Compression for build and deployment tools.	No	0.5.8.0
AntiXssLibrary	Ms-PL	XSS protection for ASPX pages. Used for OperationsWeb project (CS tools) and one page in Client project.	No	1.5.0.0
Big.js	MIT Expat	Decimal math in signup, avoids floating point math.	Yes	2.5.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
DynamicPDF Rasterizer	Commercial	Rasterize PDFs for virtual item insertion. Virtual item insertion used for automatic check deposit summaries.	No	2.0.0.20524
DynamicPDF Rasterizer	Commercial	Rasterize PDFs for virtual item insertion. Virtual item insertion used for automatic check deposit summaries.	No	1.0.0.3610
ComponentArt Web.UI	Commercial	UI components for OperationsWeb project (CS tools).	No	2008.2.1267.35
Extended WPF Toolkit Community Edition	Ms-PL	UI components for OpsWizard.	Yes	2.0.0.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
FedACH Database	Unknown	<p>Routing number database for electronic check deposit.</p> <p>Newer versions are automatically downloaded.</p>	Yes	Unknown
GeoLite Country Database	Open Data License	<p>GeoIP database for IP to country mapping.</p> <p>Newer versions are automatically downloaded.</p>	No	20110802

CONFIDENTIAL

Name	License	Usage	Distributed	Version
GeoLite Country Database	Open Data License	GeoIP database for IP to country mapping. Newer versions are automatically downloaded.	No	20010802
AForge.Net	LGPL 3	General image processing, including binarization. Used client-side (OpsWizard) and server-side. Custom build with modifications.	Yes	2.1.4.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
ClearImage SDK	Commercial	MICR detection for finding checks in content scans.	No	1.1.3181.18729
ClearImage SDK	Commercial	MICR detection for finding checks in content scans.	No	1.0.0.0
ClearImage SDK	Commercial	MICR detection for finding checks in content scans.	No	16.1.0.0
ClearImage SDK	Commercial	MICR detection for finding checks in content scans.	No	6.0.0.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
iTextSharp	MPL 1.1 or LGPL 2	General server-side PDF processing. Newer versions are AGPL or Commercial.	No	4.1.6.0
JavaScript Debug	MIT	JavaScript debug library, currently unused.	Yes	0.4
Javascript.NET	New BSD License	Support library for JSLint during build process.	No	Unknown
jQuery	MIT	jQuery used in OperationsWeb project and Client project.	Yes	1.4.2

CONFIDENTIAL

Name	License	Usage	Distributed	Version
jQuery	MIT	jQuery used in Client project.	Yes	1.7.1
jQuery UI	MIT	jQuery module used in Client project.	Yes	1.7.1
jQuery UI Date Picker	MIT	jQuery module used in Client project. Custom download from jQuery UI website.	Yes	1.8.16
jQuery.dimensions	MIT	jQuery module used in Client project.	Yes	1.2

CONFIDENTIAL

Name	License	Usage	Distributed	Version
jQuery Globalization	Unknown	jQuery module used in Client project.	Yes	Unknown
jQuery Globalization	Unknown	jQuery module used in Client project.	Yes	Unknown
jQuery Hotkeys	MIT	jQuery module used in OperationsWeb.	Yes	0.7.8
jqGrid	MIT	jQuery module used in Client project.	Yes	3.3.2
jQuery Plugin: jqModal	MIT	jQuery module used in Client project.	Yes	r12

CONFIDENTIAL

Name	License	Usage	Distributed	Version
jQuery BBQ: Back Button & Query Library	MIT	jQuery module used in Client project.	Yes	1.2.1
jQuery resize event	MIT	jQuery module used in Client project.	Yes	1.1
jQuery Data Link plugin	MIT	jQuery module used in Client project.	Yes	1.0.0pre
jQuery Plugin: Mobile	MIT	jQuery module used in Client project. Custom patched.	Yes	1.0b2

CONFIDENTIAL

Name	License	Usage	Distributed	Version
jQuery Plugin: Mobile Date Box	MIT-like	jQuery module used in Client project.	Yes	1.0a4.1
jQuery Templating Plugin	MIT	jQuery module used in Client project.	Yes	Unknown
jQuery Templating Plugin	MIT	jQuery module used in Client project.	Yes	Unknown
hoverIntent	MIT	jQuery module used in Client project.	Yes	Unknown
jQuery.bgiframe	MIT	jQuery module used in Client project.	Yes	2.1

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Superfish	MIT	jQuery module used in Client project.	Yes	1.4.8
Supersubs	MIT	jQuery module used in Client project.	Yes	0.2b
jQuery blockUI plugin	MIT	jQuery module used in Client project.	Yes	2.33
jQuery Globalization	Unknown	jQuery module used in Client project.	Yes	Unknown
LINQ for JavaScript	Ms-PL	jQuery module used in Client project.	Yes	2.2.0.2

CONFIDENTIAL

Name	License	Usage	Distributed	Version
jQuery.splitter	MIT	jQuery module used in Client project.	Yes	1.5.1
JSLint	JSLint License	JavaScript syntax checker run during build process.	Yes	2010-07-14
Leptonica	CC-BY-2.5	Native code image binarization used client-side (OpsWizard) and server-side. Custom build with modifications.	Yes	Unknown

CONFIDENTIAL

Name	License	Usage	Distributed	Version
log4net	Apache 2.0	Logging framework used client-side (OpsWizard) and server-side. Custom build with modifications.	Yes	1.2.10.0
Microsoft MEF	Ms-PL	Dynamic component loading used in StaticLoader.	No	2009.1.23.0
Microsoft SQL Server CE	Commercial	Database for build server tools.	No	3.5.5386.0
Microsoft Visual C Runtime	Commercial	Visual C runtime required for Leptonica image processing.	Yes	10.0.30319.1

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Microsoft Ajax Control Toolkit	New BSD License	UI components used in OperationsWeb.	No	3.0.20229.0
Microsoft Ajax Min	Apache 2.0	CSS and JS minification tool used during build process.	No	4.21.4169.30113
Microsoft CCI	Commercial	Code analysis (FxCop) support library for use during builds.	No	10.0.30319.1
Mono	MIT X11	Mono support library used during build process.	No	0.9.4.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Mono	MIT X11	<p>Mono support library used during build process.</p> <p>POSIX support library for DownloaderTool running on Mono on POSIX platforms.</p>	No	4.0.0.0
Mono	GPL	<p>Debug symbol converter used during build process for DownloaderTool.</p>	No	0.0.0.0
Neodynamic Barcode Professional	Commercial	<p>Barcode rendering library used for OperationsWeb and OpsWizard.</p>	No	4.0.2000.2

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Neodynamic Barcode Professional	Commercial	Barcode rendering library used for OperationsWeb and OpsWizard.	No	4.0.2000.4
Ookii Dialogs	BSD-style	UI components used in OpsWizard.	No	1.0.0.0
Microsoft Visual C Runtime	Commercial	Visual C runtime required for PDFLib pCOS library.	No	7.10.3052.4
PDFLib pCOS	Commercial	PDF parsing to extract hyperlinks for virtual item insertion.	No	2.0.0.0
PdfSharp	MIT-style	PDF processing for file validation on the image servers.	No	1.31.1789.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Fizzler	LGPL 3	Support library for PreMailer.Net. Custom build with modifications.	No	1.0.11812.112
HtmlAgilityPack	Ms-PL	Support library for PreMailer.Net.	No	1.4.0.0
PreMailer.Net	MIT-style	HTML email processor for CSS/HTML manipulation.	No	0.5.0.0
Prime OCR	Commercial	OCR for content scans and envelope images.	No	4.0.0.4

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Prime OCR	Commercial	OCR for content scans and envelope images.	No	4.0.1.3
Script#	Apache 2.0	Script# component. Used for generating client-side JavaScript from C#.	Yes	0.7.4.0
Script#	Apache 2.0	Script# component. Used for generating client-side JavaScript from C#.	No	0.7.6.0
SharpZipLib	GPL 2 w/ Linking Exception	ZIP processing used client-side (OpsWizard) and server-side. Custom build with modifications.	Yes	0.85.5.452

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Tasman Bars	Commercial	Barcode recognition used in OpsWizard.	Yes	3.61.0.0
NetReflector	LGPL 3	Support library for build tools.	No	1.1.2009.1214
CruiseControl.NET	BSD-style	Support library for build tools.	No	1.6.7981.1
GNU GZip	GPL 2	Compression during build process.	No	1.3.12.2844
Vintasoft Annotation	Commercial	Vintasoft support library.	Yes	3.3.1.1
Vintasoft Barcode	Commercial	Barcode recognition used in OpsWizard.	Yes	7.0.0.1

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Vintasoft Imaging	Commercial	Image processing used in OpsWizard.	Yes	3.3.1.1
Vintasoft Twain	Commercial	TWAIN scanning access used in OpsWizard.	Yes	5.1.0.1
Litle API Contracts	Commercial	Service contracts for interfacing with Litle/Vantiv for credit card processing. Used to generate code.	No	Unknown
Authorize.Net API Contracts	Commercial	Service contracts for interfacing with Authorize.Net (deprecated in favor of Litle). Used to generate code.	No	Unknown

CONFIDENTIAL

Name	License	Usage	Distributed	Version
USPS API Contracts	Commercial	Service contracts for USPS estimates (deprecated in favor of Stamps.com). Used to generate code.	No	Unknown
FedEx API Contracts	Commercial	Service contracts for FedEx estimates and labels. Used to generate code.	No	Unknown
Stamps.com API Contracts	Commercial	Service contracts for USPS estimates and labels. Used to generate code.	No	36

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Endicia API Contracts	Commercial	Service contracts for Endicia estimates and labels (never deployed, Stamps.com used instead). Used to generate code.	No	Unknown
Fundtech API Contracts	Commercial	Service contracts for Fundtech used for electronic check deposit. Used to generate code.	No	Unknown
Google Closure Compiler	Apache 2.0	Used to minify custom build of jQuery. Required to minify custom jQuery build. Not present in SVN.	No	20091218

CONFIDENTIAL

Name	License	Usage	Distributed	Version
ARSoft.Tools.Net	Apache 2.0	DNS library used server-side for email transmission.	No	1.7.2
Microsoft.AspNet.WebApi	MVC 4	Microsoft Web API support assemblies for the Client and PlatformServices project.	No	4.0.20710.0
Microsoft.AspNet.WebApi.Client	MVC 4	Microsoft Web API support assemblies for the Client and PlatformServices project.	No	4.0.30506.0
Microsoft.AspNet.WebApi.Core	MVC 4	Microsoft Web API support assemblies for the Client and PlatformServices project.	No	4.0.30506.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
Microsoft.AspNet.WebApi.WebHost	MVC 4	Microsoft Web API support assemblies for the Client and PlatformServices project.	No	4.0.30506.0
Microsoft.Net.Http	MVC 4	Support assemblies for Microsoft Web API.	No	2.0.20710.0
Microsoft.Web.Infrastructure	MVC 3	Support assemblies for Microsoft Web API.	No	1.0.0.0
Newtonsoft.Json	MIT	JSON serialization library required by Microsoft .NET.	No	5.0.6

CONFIDENTIAL

Name	License	Usage	Distributed	Version
NUnit	zlib-like	Unit testing library for internal tests, mostly around validation of integrations with 3rd parties.	No	2.6.3
ScriptSharp	Apache 2.0	Script# component. Used for generating client-side JavaScript from C#.	No	0.7.5.1
ScriptSharp.FxCop	Apache 2.0	Script# component. Used for generating client-side JavaScript from C#.	No	0.7.5.0
ScriptSharp.Lib.HTML	Apache 2.0	Script# component. Used for generating client-side JavaScript from C#.	No	0.7.5.0

CONFIDENTIAL

Name	License	Usage	Distributed	Version
SSH.NET	New BSD License	SSH library used for communicating with Fundtech for electronic check deposit.	No	2013.4.7

CONFIDENTIAL**(i)(C)**

None.

(i)(D)

The Company previously granted a license to use the IRIS Platform to Swiss Post Box (the “Swiss Post Box Agreement”). The Swiss Post Box Agreement was not renewed and the license granted thereunder expired according to its terms.

The Company previously granted a license to use the IRIS Platform to Sprint (the “Sprint Agreement”). The Sprint Agreement was not renewed and the license granted thereunder expired according to its terms.

(i)(E)

The Seller provided source code to Swiss Post Box under the Swiss Post Box Agreement and under the terms of the Swiss Post Box Agreement such source code was to be deposited with an escrow agent. However, the source code was never deposited with an escrow agent and Swiss Post Box advised the Seller that such source code was destroyed when Swiss Post Box ceased using such source code in its business activities.

(i)(F)

Name of Employee or Contractor	Copy of Proprietary Information, Invention Assignment and Non-Solicitation Agreement Provided in Virtual Data Site?
Amann, Kyle J	Y
Banos, Yoel	Y
Becdach, Jalil	Y
Buganan, Michelle T	Y
Camacho, Jessica	Y
Clark, Damarcus R	Y
Clay, Charles M	Y
Duke, Justin J	Y
Farley, Jacob M	Y
Finkle, Daniel K	Y
Gorman, John S	Y
Gorman, Joseph W	Y
Hensley, Amber J	Y
Horton, John H	Y

CONFIDENTIAL

Name of Employee or Contractor	Copy of Proprietary Information, Invention Assignment and Non-Solicitation Agreement Provided in Virtual Data Site?
La Sac, Joseph	Y
Lee, Stacey L	Y
Lee, Steven J	Y
Parada, Barbara	Y
Rivera, Melissa	Y
Roe, Christopher J	Y
Russo, Anthony M	Y
Russo, Timothy P	Y
Savicki, Stephanie L	Y
Snyder, Andrea	Y
Smith, David D	Y
Vargas, Carlos	Y
Vega, Nelson	Y
Walsh, Phil T	Y
Wilson, James L	Y
Bloodworth, Don A	Y
Boden, Sarah G	Y
Cosgrove, Claudia L	Y
Hymowitz, Mitchell I	Y
Miller, LeeAnne	Y
Ramirez, Ariana E	Y
Ribary, Stacey J	Y
Saini, Susan	Y
Wiener, Ron	Y
Womack, Shani J.	Y
Woodruff, Dana J	Y
Bennett, Beth E	Y
Bowman, Clifford G.	Y
Brandis, Timothy	Y
Campbell, Russell D	Y
Cho, Daniel S	Y
Cole, Brian A	Y
Davis, Matthew R	Y
Davis, William M.	Y
Dreke, Christian	Y
Dujari, Rajeev	Y

CONFIDENTIAL

Name of Employee or Contractor	Copy of Proprietary Information, Invention Assignment and Non-Solicitation Agreement Provided in Virtual Data Site?
Dunlop, Tara L	Y
Fang, Li	Y
Hill, Derek P	Y
Irvine, Paul	Y
Isaac, Steven A	Y
Johnson, Courtney Corey	Y
LaMar, James	Y
Long, Gregory Q	Y
Ly, Tam C	Y
Meldrum, Christopher A	Y
Miles, Michael D	Y
Newton, Brent H	Y
Pearce, Cynthia E.	Y
Plaza, Vincent M	Y
Prochaska, Brett R	Y
Pulliam, Jacob	Y
Rochat, Deborah L	Y
Rosinski, Zigmund	Y
Smith, Jeremy B	Y
Snelgrove-Simpson, Carl Adam	Y
Staub, Carl V	Y
Van Ommen, Seth L	Y
Weldy, Tome J	Y
White, Kelly	Y
Wick, Ronald A	Y
Wilhelm, Gregory L	Y
Zilka, Nathan B	Y
Zitkovich, Steven M	Y
Walsh, Ethan N	Y
Weil, Austin P	Y
Elashmawi, Khalid N	Y
Lublin, Andy P	Y
Palmer, Tyler J	Y
Salvage, Chris A	Y
Walters, Joseph V	Y
Ortiz, Armando F	Y

CONFIDENTIAL

Name of Employee or Contractor	Copy of Proprietary Information, Invention Assignment and Non-Solicitation Agreement Provided in Virtual Data Site?
Salinas, Arcadio	Y
Fulgham, Matthew A	Y
Betzina, John S	Y
Lloyd, Brittani K	Y
Groh, Wesley C	Y
Bandfield, Lee A	Y
Rice, Sara A	Y
Little, Craig	Y
Luu, Kevin	Y
Fulgham, Travis L	Y
Tauber, Raven A	Y
Terwelp, Russel I	Y
King, James B	Y
Cawley, Stephen J	Y
Babione, Cassandra M	Y
Jordan, Crystal R	Y
Lamar, Alicia	Y
Bosch, Stephanie D	Y
Brokaw, Heather M	Y
Brown, Tiffany R	Y
Zagorski, Ricky A	Y
Williams, Brian T	Y
Smith, Kyle D.	Y
Scoles, Noah J	Y
McCasland, Maria L.A.	Y
Barrett, Andrew Michael	Y
Young, David J	Y
Woods, Tiana A	Y
Crawford, James L	Y
Rodgers, Janean M	Y
Rymer, Eric A	Y
Mcintyre, Brandon D	Y
Garaventa, Kevin P	Y
Moe, Jeff C	Y
Smith, Curtis J	Y
Chang, Richard	Y

CONFIDENTIAL

Name of Employee or Contractor	Copy of Proprietary Information, Invention Assignment and Non-Solicitation Agreement Provided in Virtual Data Site?
Sherman, Marc N.	Y
Collazo, Suzzette T	Y
Lopez, Gamaliel J	Y
Marchessi, Lorenzo	Y
Parada, Lester	Y
Rivas, Xavier E	Y
Lizardy, Robert J	Y
Lum, James Christopher	Y
Laing, Jessica C	Y
Sullivan, Kristin R	Y
Kane, Joanna W	Y
Shelly, Nicole J	Y
Haskell, Sarah C	Y
Baxter, Charles R	Y
Soloway, Peter J	Y
Sirek-Love, Samara	Y
Monson, Erica L.	Y
Khandoker, Rakin	Y
Moua, Rebecca I	Y
Koppy, Julie A	Y
Walker, Mary M	Y
Sellers, Daniel J	Y
Gallagher, James O	Y
Bevis, George W	Y
Sprute, Philip	Y
Hicks JR, Carl	Y
Abel, Kara A	Y
Gilbert, Robert	Y
Weiss, Adam S.	Y
Powell, Cameron C	Y
Roan, Natalee R	Y
Groenier, Steven W	Y
Grimes, Jessica L	Y
Dusche, Michael S.	Y
Enrico, Ellen	Y
Wenker, Jeffrey	Y

CONFIDENTIAL

Name of Employee or Contractor	Copy of Proprietary Information, Invention Assignment and Non-Solicitation Agreement Provided in Virtual Data Site?
Mott, Kasey E	Y
Larralde, Chris P	Y
Robison, Ariella N	Y
Diniro, Nathan W	Y
Valenti, Ross P	Y
Widner, David E	Y
Hymowitz, Nava C	Y
Kirchner, Max	Y
Cox, Joshua D	Y
Banks, Robert L	Y
Maynor, Benvenido	Y
Ralston Jr, David F	Y
Faulkner, Chris ⁽¹⁾	N

- (1) Mr. Faulkner was employed by the contracting firm ProDX when he performed work for the Seller. All intellectual property developed by Mr. Faulkner for the Seller belongs to the Seller.

(ii)(A)

The Seller has not provided a copy of the Swiss Post Box Agreement.

The Seller has not provided a copy of the Sprint Agreement.

The Seller has not provided copies of Proprietary Information, Invention Assignment and Non-Solicitation Agreements for the following individuals:

- Katherine Grace Graham
- Kendal L. Portugal
- Maria L. Montalvo
- Laura C. Kirby
- Philips R. Andrews
- Anthony J. Slyter
- Megan L. Loflin
- Chris Faulkner

CONFIDENTIAL

- Ken Hall

The Seller has not provided contracts for the various widely-available, commercial Microsoft support and development products, including, but not limited to, Microsoft Visual Studio Premium with MSDN, Microsoft SQL Server, Microsoft System Center, Microsoft Windows Server and Windows.

Although Seller has not provided the contracts listed in this Schedule 4.5(b)(ii)(A), to the Knowledge of the Seller, all such contracts are valid and enforceable.

(ii)(B)

Prior to November 4, 2014, the Seller's source code relating to its online signup process referenced an HTC Script (essentially JavaScript) which the Seller believes was licensed under the GPL v3. This HTC Script was only used in customer's browsers (specifically Internet Explorer 8 and earlier).

(ii)(C)

See Schedule 4.5(c)(iii).

(ii)(D)

None.

(ii)(E)

The Seller installed the following Software:

- one of the Seller's computers has SQL Server 2008 R2 Standard installed instead of SQL Server 2008 R2 Workgroup;
- at least one of the Seller's computers has Office 2007 Professional Plus installed instead of Office 2007 Enterprise.
- two of the Seller's computers have Windows 7 Ultimate installed instead of Windows 7 Enterprise.

The Seller is in the process of installing the intended versions.

(ii)(F)

CONFIDENTIAL

In an executive status report prepared during the first part of 2008, there was a mention of a possible claim against the Seller for infringement of the Intellectual Property Rights of another Person. The Seller has not been able to find a copy of that executive status report. The Seller has not received any further written communication regarding the potential infringement discussed in the executive status report.

(ii)(G)

Reference is hereby made to Liens securing indebtedness for borrowed money which the Seller expects to be discharged by the Bankruptcy Court in the Bankruptcy Case, including:

UCC File No.	Filing Date	Secured Party
7962906 7962906-1	05/12/2008 12/13/2012	Comerica Bank
8470213	03/01/2010	Ignition Ventures Management, LLC, as collateral agent
8524983	05/12/2010	Hewlett-Packard Financial Services Company
89934447	01/14/2014	Marlin Business Bank
89958938	02/12/2014	Erving Leasing Company

CONFIDENTIAL**Schedule 4.5(c)****Additional Intellectual Property Disclosures and Representations****(ii)**Patent Applications

Country	Application No Filing Date	Patent No. Issue Date	Inventors	Title
Australia	2007233075 03/30/2007		Ron Wiener Michael D. Miles Brett Prochaska	Item Management Systems and Associated Methods
United States	60/592,648 07/30/2004		Ron Wiener	System and Method for Providing a Virtual Mailbox
United States	60/619,367 10/15/2004		Ron Wiener Michael D. Miles	Automated Material Storage and Retrieval System
United States	60/626,571 11/09/2004		Ron Wiener Michael D. Miles	Automated Storage and Retrieval System- Sequencing and Sortation Utility
United States	11/195,491 08/01/2005		Ron Wiener Michael D. Miles	System and Method for Providing a Virtual Mailbox
United States	11/253,091 10/17/2005		Ron Wiener Michael D. Miles Brett Prochaska	Item Management Systems and Associated Methods
United States	60/787,319 03/30/2006		Ron Wiener Michael D. Miles	Docubotic Sorters for Universal Service Providers (National Post Offices)

CONFIDENTIAL

Country	Application No Filing Date	Patent No. Issue Date	Inventors	Title
			Brett Prochaska	
United States	60/787,271 03/30/2006		Ron Wiener Michael D. Miles	Autonomous Mail Dispensing Kiosk
United States	60/787,320 03/30/2006		Ron Wiener Michael D. Miles	Handheld Printer for Making Information Directly on Items Without Use of Labels
United States	60/787,321 03/30/2006		Ron Wiener	Documentary Retroactive Video Editing and Surveillance System
United States	60/861,357 11/27/2006		Michael D. Miles	Sortation and Extraction System for Item Management Systems
United States	60/893,539 03/07/2007		Ron Wiener Michael D. Miles	Handheld Printer for Marking Information Directly on Items Without the Use of Labels
United States	11/694,751 03/30/2007		Ron Wiener Michael D. Miles Brett Prochaska	Item Management Systems and Associated Methods
PCT	PCT/US05/037613 10/17/2005		Michael D. Miles	Item Management Systems and Associated Methods
PCT	PCT/US07/065712 03/30/2007		Michael D. Miles	Item Management Systems and Associated Methods
Canada	2,584,336 10/17/2005		Ron Wiener Michael D. Miles Brett Prochaska	Item Management Systems and Associated Methods
Europe	05815144.0		Ron Wiener	Item Management Systems and Associated Methods

CONFIDENTIAL

Country	Application No Filing Date	Patent No. Issue Date	Inventors	Title
	10/17/2005		Michael D. Miles Brett Prochaska	
Europe	07759894.4 03/30/2007		Ron Wiener Michael D. Miles Brett Prochaska	System and Method for Providing a Virtual Mailbox
Israel	194451 09/28/2008		Michael D. Miles	Item Management Systems and Associated Methods
Japan	2007-537030 10/17/2005		Michael D. Miles	Item Management Systems and Associated Methods
Japan	2009-503321 03/30/2007		Michael D. Miles	Item Management Systems and Associated Methods
Korea, Republic of	10-2008-7026548 03/30/2007		Ron Wiener Michael D. Miles Brett Prochaska	Item Management Systems and Associated Methods
New Zealand	571635 03/30/2007		Ron Wiener Michael D. Miles Brett Prochaska	Item Management Systems and Associated Methods
United States	11/946,023 11/27/2007		Michael D. Miles	Sortation and Extraction System for Item Management Systems and Associated Methods
PCT	PCT/US07/085679 11/27/2007		Michael D. Miles	Sortation and Extraction System for Item Management Systems and Associated Methods

CONFIDENTIAL

Country	Application No Filing Date	Patent No. Issue Date	Inventors	Title
United States	61/054,073 05/16/2008		Rajeev Dujari Matt Davis Matt Clay Paul Irvine Tam Ly	Systems for Electronic Deposit of Financial Instruments and Associated Methods
United States	12/467,825 05/18/2009		Rajeev Dujari Matt Davis Matt Clay Paul Irvine Tam Ly	Systems for Electronic Deposit of Financial Instruments and Associated Methods
United States	61/143,347 01/08/2009		Ron Wiener	Trusted Postal Email

None of the foregoing patents have been issued.

Trademarks

Country	Registration No.	Registration Date	Mark
United States	4,000,763	July 26, 2011	EARTH CLASS MAIL

(iii)

From time to time the Seller may have disclosed source code or other material confidential information or material Trade Secrets of the Seller to Employees or Former Employees. Although these Employees or Former Employees are subject to confidentiality or non-disclosure agreements that prohibit the use or disclosure of such confidential information, the Seller has not provided signed confidentiality or non-disclosure agreements for the following individuals:

- Katherine Grace Graham
- Kendal L. Portugal
- Maria L. Montalvo
- Laura C. Kirby
- Philips R. Andrews
- Anthony J. Slyter
- Megan L. Loflin

CONFIDENTIAL

- Chris Faulkner⁽¹⁾
- Ken Hall

(1) Chris Faulkner was employed by the contracting firm ProDX when he performed work for the Seller. All intellectual property developed by Mr. Faulkner for the Seller belongs to the Seller.

(iv)

All rights to Intellectual Property Rights developed since June 1, 2007 and assigned by Former Employees pursuant to invention assignment agreements in the form provided to the Buyer.

The Prime OCR License.

BizSpark License.

(v)

None.

(vi)

None.

(vii)

None.

(viii)

None.

(ix)

Although no material defects exists in the software that comprises or that enables or is embedded within any Seller Product, there have been in the past, and may be in the future, certain defects that require intervention by the Seller's technical personnel which, absent such intervention, would likely constitute a material defect that adversely affects the use, functionality, performance or value of the software. Such defects include, but are not limited to, the following:

CONFIDENTIAL

- A custom workflow for a single customer receives, electronically deposits and reports rent checks received from the customer's tenants. Although this process is largely automated, issues arise that require further attention, such as returned checks.
- On occasion, an item is scanned and entered into the delivery pipeline which will crash the envelope OCR process, requiring all delivery to be done manually until the issue is resolved.
- On occasion, operations staff will need to cancel a shipping label generated by the system after the shipment has been completed and recorded.
- Former customers often desire to reclaim their old customer number from a terminated account and there is no means for performing this function in the user interface.
- There is no user interface for making corrections to incorrect weight or dimensions entered into the system, which can cause a customer to be charged incorrect storage fees and to have trouble shipping the mail item.
- On occasion, the electronic check deposit service has failed when the check magnetic ink character recognition is incorrectly detected and it is not detected during the quality assurance processes.
- Although this feature is supported by the Iris platform, there is no user interface to configure the transfer of items between multiple accounts held by a single customer.
- The Iris platform makes extensive use of database backed queues for most services. There are certain failure scenarios which are not handled by automated processes and occasionally require an engineer to manually trigger a retry, or if necessary, cancel the failed queue operation. This can impact activities like delivery of mail, completion of content scans, transmission of email, or any number of other actions.

(x)

None.

(xi)

The Seller is obligated to pay license and maintenance fees with respect to widely-available commercial software products that are used in conjunction with Seller Products and are licensed by Seller pursuant to a non-exclusive, internal-use licenses.

(xii)

As described in Schedule 4.3, there can be no assurance that the BizSpark License will be assignable to Buyer without consent.

CONFIDENTIAL

(xiii)

Reference is hereby made to the Financial Model IP License, which is not fully transferable, alienable and licensable by the Seller without consent.

As described in Schedule 4.3, there can be no assurance that the BizSpark License will be assignable to the Buyer without consent.

(xiv)

As described in Schedule 4.3, the Financial Model IP License may not be assignable to the Buyer without consent.

As described in Schedule 4.3, the BizSpark License may not be assignable to the Buyer without consent.

CONFIDENTIAL

Section 4.6
Privacy; Data Protection

4.6(a)

The Seller uploads certain personal and behavioral information to the Google Analytics platform. Under the terms of the policies applicable to the Google Analytics platform, the Seller may not upload information to Google Analytics if that information permits Google Analytics to identify the individuals to whom the information relates. Currently, the Seller does upload certain personal and behavioral information to the Google Analytics platform that would allow Google Analytics to identify the relevant individuals. In order to comply with the policies applicable to the Google Analytics platform, the Seller needs to purge the identifying information and modify its future practices to comply with the policies. For the avoidance of doubt, the Seller has not received any communication from Google Analytics regarding the potential non-compliance described above.

4.6(b)

The current version of the Seller's privacy policy is available on the Seller's website at <https://www.earthclassmail.com/Privacy>. Copies of previous versions of the Seller's privacy policy have been provided to the Buyer.

4.6(c)

The Seller has begun the process of implementing a security plan. However, the Seller disclaims any representation or warranty as to whether (a) such security plan identifies all internal and external risks to the security of data and confidential information and (b) the administrative, electronic and physical safeguards implemented by such security plan are adequate and effective. In order to reduce the likelihood of data loss, the Seller backs-up data to a disk. However, the Seller has not implemented any offline or "cold" back-ups (e.g. tape back-up) and as a result, the Seller's security plan may not be adequate to prevent data loss.

The Seller is not required to submit a Self-Assessment Questionnaire ("SAQ") until December 2015. If the Seller were to submit an SAQ as of the date hereof, the Seller would not be compliant with all information and data security requirements of the PCI DSS. As of the date hereof, the PCI DSS does not require the Seller to be audited by a Qualified Security Assessor or Approved Scanning Vendor. However, if the Seller were to submit a SAQ as of the date hereof, the Seller would be required to have an independent third party perform penetration testing, which testing has not been conducted to date. If, as a result of the Transactions, the Seller's credit card processor Litle/Vantiv requires the

CONFIDENTIAL

Seller to submit a new SAQ, the Seller would not be able to claim PCI compliance and would be required to submit the SAQ under the new PCI DSS 3.0 requirements.

CONFIDENTIAL**Section 4.7****Compliance with Law; Permits****4.7(a)**Worker's Compensation

In early January 2015, a representative from American International Group, Inc. ("AIG"), the Seller's workers' compensation insurance carrier, came to its Beaverton location to perform an audit. AIG subsequently advised the Seller that operational employees would need to be changed to a different class code. Such a change may cause the rate to increase. It is unclear as to how much this will increase the Seller's rate and whether the new rate will be applied retroactively.

Revenue Allocation and Effect on State Taxes

The Seller has never received (or requested) an opinion from any state supporting its approach to revenue allocation. If a state were to disagree with the Seller's approach to revenue allocation, this could result in an increase in taxes, including business and occupation taxes.

4.7(b)

Except as otherwise noted below, the Seller is in compliance in all material respects with the following Permits used in the conduct of the Business:

- Each customer must complete and have notarized a PS Form 1583 and the Commercial Mail Receiving Agency (the "CMRA") must remit the original to the postmaster. Seller has received customer completed PS Form 1583s from substantially all of its customers.
- As a CMRA, Seller is required to file a PS Form 1583-A Application for each location Seller operates as a CMRA. The Seller is in compliance with this requirement.
- All CMRA's must remain in compliance with Domestic Mail Manual Sections 508.1.8.1 through 508.1.8.4.
- Any changes to the information contained on the PS Form 1583, including a change in the CMRA, requires the filing of a revised PS Form 1583.
- City of Beaverton Business License.
- Beaverton Police Department Alarm Permit.
- City of San Francisco Business License.
- City of San Francisco Alarm Permit.
- City of West Hollywood Business License.
- City of West Hollywood Alarm Permit.
- City of Seattle Business License.
- Seller is registered with the following Secretaries of State:
 - Oregon

CONFIDENTIAL

- California
- Washington [*Note: see Schedule 4.1.*]
- New York [*Note: see Schedule 4.1.*]

CONFIDENTIAL

EXHIBIT A
Tangible Personal Property
(See attached)

EXHIBIT A**Computer Equipment**

Description	Serial Number	Vendor Name	Location
MacBook Pro, Chris Roe	W802335HAGZ	Apple	Beaverton
Optiplex 980 Dev System	FCTBDP1	Dell Marketing Services	Beaverton
Optiplex 980 Dev System	FCV9DP1	Dell Marketing Services	Beaverton
Optiplex 980 Dev System	FCTDDP1	Dell Marketing Services	Beaverton
Optiplex 980 Dev System	FCTCDP1	Dell Marketing Services	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Western Digital hard drives		CC	Beaverton
Data center image and backup server discs		CC	Beaverton
Data center image and backup server discs		CC	Beaverton
Discs, data center VM Server		CC	Beaverton

Description	Serial Number	Vendor Name	Location
Dell R730 Server	CS4DR22	Dell Business Credit	Data Center-PDX
Dell R730 Server	CS4FR22	Dell Business Credit	Data Center-PDX

Hosting Equipment

Description	Serial Number	Vendor Name	Location
Ratitan Dominion DKX2 32 port KVM switch, Data Center	HKB7800081	James Wilson WF CC	Data Center-PDX
PowerEdge R720 Server	1LNCMV1	Dell Marketing L.P.	Data Center-PDX
PowerEdge R720 Server	JKNCMV1	Dell Marketing L.P.	Data Center-PDX
CyberPower PR6000LCDRTXL5U Smart App Sinewave 6000 VA rack-mountable UPS	PQN0N2000040	Amex	Beaverton
Disks new VM servers purchased 6/20/12		Provanantage via. M. Clay Wells card	Data Center-PDX
Juniper EX2200 48 Switch	CT0213050620	CDW Direct	Beaverton
Juniper EX2200 48 Switch	CT0213050922	CDW Direct	Beaverton
Juniper SRX Firewall	SBU1913AA0440	CDW Direct	Data Center-PDX
Juniper SRX Firewall	SBU1913AA0645	CDW Direct	Data Center-PDX
Juniper EX4200 48PT Switch	BP0212478108	CDW Direct	Data Center-PDX
Juniper EX4200 48PT Switch	BP0212489719	CDW Direct	Data Center-PDX
SRX210 Rack Mount		CDW Direct	Beaverton
SRX210 Rack Mount		CDW Direct	Beaverton
SRX210 Rack Mount		CDW Direct	ua-ny
SRX210 Rack Mount		CDW Direct	ua-ny
SRX210 Rack Mount		CDW Direct	ua-sea
SRX210 Rack Mount		CDW Direct	ua-sea
Juniper EX2200 24PT Switch	CW0213040500	CDW Direct	ua-ny
Juniper EX2200 24PT Switch	CW0213071704	CDW Direct	ua-ny

Description	Serial Number	Vendor Name	Location
Juniper EX2200 24PT Switch	CW0213071819	CDW Direct	ua-sea
Juniper EX2200 24PT Switch	CW0213071837	CDW Direct	ua-sea
Juniper EX2200 24PT Switch	CW0213071843	CDW Direct	ua-sf
Juniper EX2200 24PT Switch	CW0213071853	CDW Direct	ua-sf
Juniper EX2200 24PT Switch	CW0213071909	CDW Direct	ua-la
Juniper EX2200 24PT Switch	CW0213072012	CDW Direct	ua-la
Juniper EX2200 48PT Switch	CU0213208659	CDW Direct	Data Center-PDX
SRX210 Rack Mount		CDW Direct	ua-sf
SRX210 Rack Mount		CDW Direct	ua-sf
Juniper EX2200 48PT Switch	CU0213125989	CDW Direct	Beaverton
Juniper SRX 210HE Firewall	SBL2813AK0424	CDW Direct	Beaverton
Juniper SRX 210HE Firewall	SBL2813AK0619	CDW Direct	Beaverton
Juniper SRX 210HE Firewall	SBL2813AK0025	CDW Direct	ua-la
Juniper SRX 210HE Firewall	SBL2813AK0032	CDW Direct	ua-la
Juniper SRX 210HE Firewall	SBL2813AK0048	CDW Direct	ua-ny
Juniper SRX 210HE Firewall	SBL2813AK0051	CDW Direct	ua-ny
Juniper SRX 210HE Firewall	SBL2813AK0079	CDW Direct	ua-sea
Juniper SRX 210HE Firewall	SBL2813AK0100	CDW Direct	ua-sea
Juniper SRX 210HE Firewall	SBL2813AK0101	CDW Direct	ua-sf
Juniper SRX 210HE Firewall	SBL2813AK0128	CDW Direct	ua-sf
Dell PowerEdge T320	96NVGX1	Dell Marketing L.P.	ua-la
Dell PowerEdge T320	96PTGX1	Dell Marketing L.P.	ua-ny

Description	Serial Number	Vendor Name	Location
Dell PowerEdge T320	96PSGX1	Dell Marketing L.P.	ua-sea
Dell PowerEdge T320	96NWGX1	Dell Marketing L.P.	ua-sf
Dell PowerEdge R720	9QCWGX1	Dell Marketing L.P.	Data Center-PDX
Dell PowerEdge R720xd	2WM48Y1	Dell Marketing L.P.	Data Center-PDX
Dell PowerEdge R720xd	2WN48Y1	Dell Marketing L.P.	Data Center-PDX
Dell PowerEdge R720xd	2WN38Y1	Dell Marketing L.P.	Data Center-PDX
Dell PowerEdge R720xd	2WN28Y1	Dell Marketing L.P.	Data Center-PDX
Hard drive - T320 above		Dell Marketing L.P.	ua-la
Hard drive - T320 above		Dell Marketing L.P.	ua-ny
Hard drive - T320 above		Dell Marketing L.P.	ua-sea
Hard drive - T320 above		Dell Marketing L.P.	ua-sf
Ethernet adapter - T320 above		Dell Marketing L.P.	ua-la
Ethernet adapter - T320 above		Dell Marketing L.P.	ua-ny
Ethernet adapter - T320 above		Dell Marketing L.P.	ua-sea
Ethernet adapter - T320 above		Dell Marketing L.P.	ua-sf
Data center rack - returned		TBD	Data Center-PDX
Infrastructure for new datacenter		Credit Card	Data Center-PDX
Server room keyboard/monitor control panel		Dell Business Credit	Data Center-PDX

Mail Handling Equipment

Description	Serial Number	Vendor Name	Location
i1420 Kodak Scanner	45636176	Pacific Office Automation	ua-sea
A3 flatbed attachment	45953429	Pacific Office Automation	ua-sea
i1420 Kodak scanner	45635971	Pacific Office Automation	ua-sea
i1420 Kodak scanner	45636174	Pacific Office Automation	hub-bvr
i1420 Kodak scanner	45635791	Pacific Office Automation	hub-bvr
A3 flatbed attachment	45953444	Pacific Office Automation	hub-bvr
i1420 Kodak scanner	45636175	Pacific Office Automation	hub-bvr
A3 flatbed attachment	45953446	Pacific Office Automation	hub-bvr
i1420 Kodak scanner	45636171	Pacific Office Automation	hub-bvr
A3 flatbed attachment	45953435	Pacific Office Automation	hub-bvr
i1420 Kodak scanner	45635968	Pacific Office Automation	ua-ny
i1420 Kodak scanner	45638075	Pacific Office Automation	ua-sea
i1420 Kodak scanner	45638699	Pacific Office Automation	ua-ny
i1420 Kodak scanner	45638856	Pacific Office Automation	hub-bvr
i1420 Kodak scanner	45647044	Ervin Leasing	hub-bvr

Description	Serial Number	Vendor Name	Location
i1420 Kodak scanner	45647046	Ervin Leasing	hub-bvr
i1420 Kodak scanner	45647041	Ervin Leasing	ua-la
i1420 Kodak scanner	45647045	Ervin Leasing	ua-ny
i1420 Kodak scanner	45647069	Ervin Leasing	ua-ny
i1420 Kodak scanner	45647071	Ervin Leasing	ua-sea
i1420 Kodak scanner	45647040	Ervin Leasing	ua-sf

Furniture Fixtures

Description	Serial Number	Vendor Name	Location
Check for \$3,300 to Jobster Â– to purchase furniture			
Anthro Technology furniture			
Panel 5x3 GY/frame GY, connector F/P-series GY		Office Depot	
Workstation-demo counter; graphics; corrugated shipping.		Exhibit Concepts Inc.	
Workstation/demo counter for UA-SEA		Exhibit Concepts Inc.	
Seville 36 inch, wide, four-shelf unit		Costco	
5 corner office desks, 5, 36 inch desks		Office Depot	
Cubes		Office Depot	
Desks for UA-LA		Tyler Palmer WF cc charge	
Refrigerator, Gemini Drive office		Stacey Lee Expense Reimbursement	

Software

Description	Serial Number	Vendor Name	Location
Windows datacenter licenses for new VM servers		CDW Direct via M. Clay Wells card	Data Center-PDX

Leasehold Improvements

Description	Serial Number	Vendor Name	Location
Architect drawing		hooksASD	UA-SF
Store signage		Revolution	UA-SF
Design work		SEAS	UA-NY
Design work		SEAS	UA-NY
Design work		SEAS	UA-SF
Design work		SEAS	UA-SF
Design work		SEAS	UA-LA
UA build-out - UA-NY		Manhattan Contracting	UA-NY
Electrical components		SEAS	UA-SF
Arakawa hardware		SEAS	UA-LA
UA design consultation for casework details, design, space planning		5ive Creative	UA-LA
UA design consultation for casework details, design, space planning		5ive Creative	UA-SF
UA design consultation for casework details, design, space planning		5ive Creative	UA-NY
Light fixtures - UA-NY		Albertson Electric	UA-NY
Retainer-construction permits/inspections		Outsource Consultants	UA-NY
Design work		SEAS	UA-LA
Build-out architect		Armstrong Association	UA-LA
Build-out contractor		Aureus	UA-LA
Electrical contractor-UA build-out		Arguello Group	UA-LA
Space planning		5ive Creative	UA-LA
Design work		SEAS	UA-NY
Space planning		5ive Creative	UA-NY
Permits		Outsource Consultants	UA-NY
Permits		NYC Build Dept	UA-NY

Description	Serial Number	Vendor Name	Location
Electrical contractor- UA build-out		Albertson Electric	UA-NY
Build-out contractor		Manhattan Contracting	UA-NY
Steel shelving brackets		SEAS	UA-NY
Design work		SEAS	UA-SF
Architect		hooksASD	UA-SF
Build-out contractor		Aureus	UA-SF
Electrical contractor- UA build-out		Arguello Group	UA-SF
Space planning		5ive Creative	UA-SF
Signage		Revolution	UA-SF
Awning fabrication & install		Zebra Awning	UA-SF
Flag pole manufacturing & install		Messenger	UA-NY
Architect		hooksASD	UA-SF
Store signage		Messenger	UA-NY
Store signage		Messenger	UA-NY
Store signage		Messenger	UA-LA
Store signage		Messenger	UA-SF
Store signage		Messenger	UA-NY
Store signage		Messenger	UA-SF
Architect		hooksASD	UA-SF
Store signage		Messenger	UA-LA
Build-out contractor		Manhattan Contracting	UA-NY
Design work		SEAS	UA-NY
Design work		SEAS	UA-SF
Build-out architect		Armstrong Assoc	UA-LA
Air conditioning installation		Aureus	UA-SF
Complete awning install		Zebra Awning	UA-SF
Front door glass		Rosen Paramount Glass	UA-NY
Gemini Drive cabling - 1st half		Technocom, Inc.	hub-bvr
Carpeting - Gemini Drive office		Nimbus Center LLC	hub-bvr
Gemini Drive cabling - 2nd half		Technocom, Inc.	hub-bvr

Description	Serial Number	Vendor Name	Location
Alarm system install - deposit		AACT	hub-bvr
Alarm system install - 2nd installment		AACT	hub-bvr
Cabling change order		Technocom, Inc.	hub-bvr
Alarm system install - change order		AACT	hub-bvr
Final billing, Gemini Drive alarm system		AACT	hub-bvr
TI allowance		Gemini Landlord	hub-bvr
Gemini Drive fire alarm system		AACT	hub-bvr
Gemini Drive fire alarm system-2nd half		AACT	hub-bvr
NY wiring - back up Internet connection		Litespeed Electric	UA-NY
NY storefront repair		Full Force Contracting	UA-NY

Car

Description	VIN	Vendor Name	Location
		Lexus	

Office Equipment

Description	Serial Number	Vendor Name	Location
Shoretel Shoregear 90, Shore Tel 120/24 voice switch etc.		Network Computing Architects Inc.	Beaverton
Shoretel IP560g-Black (6.1 or later)		Network Computing Architects Inc.	Beaverton
		Network Computing Architects Inc.	Beaverton

Office Equipment (Assets No Longer in Service)

Description	Serial Number	Vendor Name	Location
Printer I-4208		Westmark Industries Inc	hub-kc
Alarm equipment		AACT	hub-bvr
Alarm equipment		AACT	hub-bvr
Ricoh Afico MP C3000 multifunction color copier, maple, 17 foot, conference table and matching credenza		Clearsight Systems Inc	Seattle

Computers

Description	Serial Number	Vendor Name	Location
ahensley-dt	9BD50G1	Dell	Beaverton
asnyder-dt	9J6TRG1	Dell	Beaverton
cbowman-dt	FCTBDP1	Dell	Beaverton
csspare-dt	7F23HF1	Dell	Beaverton
dfinkle-dt	3F23HF1	Dell	Beaverton
dsellers-dt	4MPLJH1	Dell	Beaverton
eco-pdx02	21JVTG1	Dell	Beaverton
eco-pdx03	5CVFTF1	Dell	Beaverton
eco-pdx05	535R9G1	Dell	Beaverton
eco-pdx06	FJW0ZD1	Dell	Beaverton
eco-pdx10	G00BRD1	Dell	Beaverton
eco-pdx11	2CVFTF1	Dell	Beaverton
eco-pdx12	C00BRD1	Dell	Beaverton
eco-qax02	600BRD1	Dell	Beaverton
jgorman-dt	FCTDDP1	Dell	Beaverton
jlascac-dt	5FVYDH1	Dell	Beaverton
mclay-dt	FCV9DP1	Dell	Beaverton
mdavis-dt	FCTCDP1	Dell	Beaverton
pwalsch-dt	19XJNH1	Dell	Beaverton
spare-dt	5MPLJH1	Dell	Beaverton
ssavicki-dt	DFVYDH1	Dell	Beaverton
croe-lt	2WTCPC1	Dell	Beaverton
dsmith-lt	2CM85F1	Dell	Beaverton

Description	Serial Number	Vendor Name	Location
dsmith-lt	CB5L0G1	Dell	Beaverton
it-lt	2D0GWD1	Dell	Beaverton
jwilson-lt	2BVP5F1	Dell	Beaverton
mclay-lt	861LRF1	Dell	Beaverton
slee-lt	G59FWD1	Dell	Beaverton
devstor01bvr	JG8VCD1	Dell	Beaverton
iwdc01bvr	JB9DYD1	Dell	Beaverton
iwphone02pdx	30XZSF1	Dell	Beaverton
iwvm10bvr	9WC1DD1	Dell	Beaverton
iwvm11bvr	9ZDWCD1	Dell	Beaverton
iwvm20bvr	2WN48Y1	Dell	Beaverton
iwvm21bvr	JS01DD1	Dell	Beaverton
iwvm10pdx	1LNCMV1	Dell	Data Center
iwvm11pdx	JKNCMV1	Dell	Data Center
iwvm12pdx	9QCWGX1	Dell	Data Center
iwvm20pdx	2WN38Y1	Dell	Data Center
iwvm21pdx	2WN28Y1	Dell	Data Center
iwvm22pdx	2WM48Y1	Dell	Data Center
iwvm30pdx	CS4FR22	Dell	Data Center
iwvm31pdx	CS4DR22	Dell	Data Center
devdb01bvr	2UX01001ZY	Hewlett-Packard	Data Center
pwdb01pdx	2UX00905VJ	Hewlett-Packard	Data Center
pwdb02pdx	2UX00200KX	Hewlett-Packard	Data Center
pwidw02pdx	2UX0100204	Hewlett-Packard	Data Center

Description	Serial Number	Vendor Name	Location
eco-lax02	5WX7BG1	Dell	Los Angeles
eco-lax03	DJW0ZD1	Dell	Los Angeles
eco-lax04	9F23HF1	Dell	Los Angeles
iwvm01lax	96NVGX1	Dell	Los Angeles
eco-jfk03	DF366F1	Dell	New York
eco-jfk04	FF366F1	Dell	New York
eco-jfk05	J0JVTG1	Dell	New York
eco-jfk06	28GP8F1	Dell	New York
eco-jfk08	78GP8F1	Dell	New York
iwvm01jfk	96NWGX1	Dell	New York
eco-sfo02	6GXKCF1	Dell	San Francisco
eco-sfo04	2WX7BG1	Dell	San Francisco
eco-sfo05	1MPLJH1	Dell	San Francisco
iwvm01sfo	96PTGX1	Dell	San Francisco
eco-sea01	C8GP8F1	Dell	Seattle
eco-sea03	BGXKCF1	Dell	Seattle
eco-sea07	6MPLJH1	Dell	Seattle
eco-sea08	6CVFTF1	Dell	Seattle
trusso-lt	FMWJPD1	Dell	Seattle
iwvm01sea	96PSGX1	Dell	Seattle

Switches & Firewalls

Description	Serial Number	Vendor Name	Location
Juniper Care 3 Year Prepaid Core Support	BL2913AK0032		Beaverton
Juniper Care 3 Year Prepaid Core Support	BL2813AK0424		Beaverton
Juniper Care 3 Year Prepaid Core Support	CD5213AK0009		Beaverton
Juniper Care 3 Year Prepaid Core Support	CT0213050922		Beaverton
Juniper Care 3 Year Prepaid Next Day Support	CT0213050620		Beaverton
Juniper Care 3 Year Prepaid Next Day Support	CU0213208659		Beaverton
Juniper Care 3 Year Prepaid Core Support	CU0213125989		Beaverton
Juniper Care 3 Year Prepaid Core Support	BL2913AK0101		New York
Juniper Care 3 Year Prepaid Next Day Support	BL2913AK0100		New York
Juniper Care 3 Year Prepaid Next Day Support	CW0213071909		New York
Juniper Care 3 Year Prepaid Core Support	CW0213072012		New York
Juniper Care 3 Year Prepaid Core Support	BL2913AK0079		Los Angeles
Juniper Care 3 Year Prepaid Next Day Support	BL2913AK0025		Los Angeles
Juniper Care 3 Year Prepaid Next Day Support	CW0213071819		Los Angeles
Juniper Care 3 Year Prepaid Core Support	CW0213071843		Los Angeles
Juniper Care 3 Year Prepaid Core Support	BU1913AA0440		Data Center
Juniper Care 3 Year Prepaid Next Day Support	BU1913AA0465		Data Center

Description	Serial Number	Vendor Name	Location
Juniper Care 3 Year Prepaid Next Day Support	BP0212478108		Data Center
Juniper Care 3 Year Prepaid Core Support	BP0212489719		Data Center
Juniper Care 3 Year Prepaid Core Support	BL2813AK0619		Seattle
Juniper Care 3 Year Prepaid Next Day Support	BL2913AK0128		Seattle
Juniper Care 3 Year Prepaid Next Day Support.	CW0213071837		Seattle
Juniper Care 3 Year Prepaid Core Support	CW0213071853		Seattle
Juniper Care 3 Year Prepaid Core Support	BL2913AK0051		San Francisco
Juniper Care 3 Year Prepaid Next Day Support	BL2913AK0048		San Francisco
Juniper Care 3 Year Prepaid Core Support	CW0213040500		San Francisco
Juniper Care 3 Year Prepaid Core Support	CW0213071704		San Francisco

Laser Printers

Description	Serial Number	Vendor Name	Location
prt01bvr	NWS3201519	Kyocera	Beaverton
prtops01bvr	Z64AB8GD1F00CMX	Samsung	Beaverton
		HP	Beaverton
prt01lax		HP	Los Angeles
prt01jfk		HP	New York
prt01sfo		HP	San Francisco
prt01sfo	Z64AB8GC7F00XRN	Samsung	Seattle
	Z64ABJACB000F6M	Samsung	Beaverton

Label Printers

Description	Serial Number	Vendor Name	Location
I-4208		DataMax	New York
ZP500 Plus		Zebra	New York
I-4208		DataMax	Seattle
ZP500 Plus		Zebra	Seattle
I-4208		DataMax	San Francisco
ZP500 Plus		Zebra	San Francisco
I-4208		DataMax	Los Angeles
ZP500 Plus		Zebra	Los Angeles
I-4208		DataMax	Beaverton
ZP500 Plus		Zebra	Beaverton
LP2844		Zebra	Beaverton
GX420d		Zebra	Beaverton

Scanners

Description	Serial Number	Vendor Name	Location
	45629022	Kodak	Beaverton
	45638699	Kodak	Beaverton
	45647044	Kodak	Beaverton
	45635791	Kodak	Beaverton
	45609245	Kodak	Beaverton
	45635971	Kodak	Beaverton
	45636176	Kodak	Beaverton
	45647046	Kodak	Beaverton
	45636175	Kodak	Beaverton
	45635968	Kodak	Beaverton
	45629652	Kodak	Beaverton
	45630484	Kodak	Beaverton
	45630471	Kodak	Beaverton
	45630492	Kodak	Beaverton
	45636171	Kodak	Los Angeles
	45630490	Kodak	Los Angeles
	45647041	Kodak	Los Angeles
	45630491	Kodak	Los Angeles
	45636174	Kodak	New York
	45638856	Kodak	New York
	45647045	Kodak	New York
	45647069	Kodak	New York

Description	Serial Number	Vendor Name	Location
	45630977	Kodak	San Francisco
	45647040	Kodak	San Francisco
	45630972	Kodak	Seattle
	45638075	Kodak	Seattle
	45647071	Kodak	Seattle

Barcode Scanners

Description	Serial Number	Vendor Name	Location
Focus MS1690		Honeywell	Seattle
Xenon 1900		Honeywell	Seattle
Focus MS1690		Honeywell	Beaverton
Xenon 1900		Honeywell	Beaverton
Focus MS1690		Honeywell	Los Angeles
Xenon 1900		Honeywell	Los Angeles
Focus MS1690		Honeywell	San Francisco
Xenon 1900		Honeywell	San Francisco
Focus MS1690		Honeywell	New York
Xenon 1900		Honeywell	New York

Scales

Description	Serial Number	Vendor Name	Location
PS15		Mettler-Toledo	New York
PS60		Mettler-Toledo	New York
PS15		Mettler-Toledo	Seattle
PS60		Mettler-Toledo	Seattle
PS15		Mettler-Toledo	San Francisco
PS60		Mettler-Toledo	San Francisco
PS15		Mettler-Toledo	Los Angeles
PS60		Mettler-Toledo	Los Angeles
PS15		Mettler-Toledo	Beaverton
PS60		Mettler-Toledo	Beaverton

Phones

Description	Serial Number	Vendor Name	Location
Data center		ShoreTel	Data Center
Gemini Drive server room		ShoreTel	Beaverton
Scan 2		ShoreTel	Beaverton
Shipping		ShoreTel	Beaverton
Scan 1		ShoreTel	Beaverton
VW office		ShoreTel	Beaverton
Matt Clay		ShoreTel	Beaverton
John Gorman		ShoreTel	Beaverton
Chris Roe		ShoreTel	Beaverton
Phil Walsh		ShoreTel	Beaverton
Danny Sellers		ShoreTel	Beaverton
Amber Hensley		ShoreTel	Beaverton
Andrea Snyder		ShoreTel	Beaverton
Test phone		ShoreTel	Beaverton
Jim Wilson		ShoreTel	Beaverton
Stacy Lee		ShoreTel	Beaverton
Stephanie Savicki		ShoreTel	Beaverton
Conference room		ShoreTel	Beaverton
Cliff Bowman		ShoreTel	Beaverton
Spare office		ShoreTel	Beaverton
Break room BVR		ShoreTel	Beaverton

Description	Serial Number	Vendor Name	Location
Joe La Sac		ShoreTel	Beaverton
David Smith		ShoreTel	Beaverton
Daniel Finkle		ShoreTel	Beaverton
Daniel, office spare		ShoreTel	Beaverton
Jessica Camacho		ShoreTel	New York
UA Seattle Ops		ShoreTel	Seattle
Tim Russo		ShoreTel	Seattle
UA San Francisco		ShoreTel	San Francisco
Justin Duke		ShoreTel	San Francisco
Jay Becdach		ShoreTel	Los Angeles
UA Los Angeles Ops		ShoreTel	Los Angeles
UA Los Angeles front		ShoreTel	Los Angeles

Kiosks

Description	Serial Number	Vendor Name	Location
iMac		Apple	Los Angeles
iMac		Apple	San Francisco
OptiPlex 330		Dell	Seattle
iMac		Apple	New York

Other

Description	Serial Number	Vendor Name	Location
Switched power distribution unit		APC	Data Center
Switched power distribution unit		APC	Data Center
Environmental sensor		ServersCheck	Beaverton
Remote keyboard/video/mouse		Raritan	Beaverton
Remote keyboard/video/mouse		Raritan	Data Center
Uninterruptible power supply		CyberPower	Beaverton
Uninterruptible power supply		Tripp Lite	Beaverton
VoIP voice switch	S90F14493D0AFA	ShoreTel	Beaverton
VoIP voice switch	T1JC08090B1109	ShoreTel	Beaverton
VoIP voice switch		ShoreTel	Beaverton
VoIP voice switch		ShoreTel	Beaverton

CONFIDENTIAL

EXHIBIT B
Contracts

Contracts not being assigned:

Secured Credit Facility Agreement by and between certain lenders signatory thereto and the Seller, dated March 1, 2010.

Loan and Security Agreement by and between Comerica Bank and the Seller, dated May 9, 2008, as amended on September 9, 2009 and accompanying Letters of Credit, dated June 6, 2008, as amended on January 9, 2014 and January 22, 2014.

Forbearance Agreement by and between Comerica Bank and the Seller, dated November 30, 2009, as amended on October 29, 2010, May 4, 2011, September 7, 2011, January __ 2012, May 9, 2012 and December 2, 2013.

Note and Warrant Purchase Agreement by and between certain investors signatory thereto and the Seller, dated May 9, 2008, as amended on September 6, 2008.

Series A Preferred Stock Purchase Agreement by and between certain investors signatory thereto and the Seller, dated August 9, 2007, as amended on February 13, 2008, and accompanying Voting Agreement, Investors' Rights Agreement and Right of First Refusal and Co-Sale Agreement.

Advisory Agreement by and between Cascadia Capital LLC and the Seller, dated October 7, 2014.

Engagement Letter by and between Perkins Coie LLP and the Seller, dated December 1, 2014.

The Seller's Management Carve-Out Plan.

Contracts to be assigned:

Microsoft BizSpark Startup Agreement by and between Microsoft Corporation and the Seller, dated July 2012, as amended by Graduation Amendment for Microsoft BizSpark Startup Program and related End User License Agreement.

The Prime OCR License.

Services Contract for Document & Data Processing by and between iBridge LLC and the Seller, dated October 15, 2008.

Lease Agreement by and between Baron Messenger and the Seller and Hot Shot Delivery, dated as of September 20, 2010 (382 NE 191st Street, Miami, Florida 33179).

Lease Agreement by and between Sunrise Delivery, the Seller and Hot Shot Delivery, dated as of September 20, 2010 (538 W. 21st Street, Houston, Texas 77008).

CONFIDENTIAL

Lease Agreement by and between Chicago Messenger, the Seller and Hot Shot Delivery, dated as of September 20, 2010 (1608 S. Ashland Ave., Chicago, Illinois 60608-2013).

License Agreement by and between Flynn Realty Services, LLC and the Seller, dated October 2009 (427 N. Tatnall Street, Wilmington, Delaware 19801).

Standard Form of Store Lease by and between 230 PAS (15 (Cliff)) L.L.C. and 230 PAS (RRPIII) LLC and the Seller, dated April 2008 (228 Park Avenue South, New York, New York 10003).

Lease Agreement by and between Merrill Place LLC and the Seller, dated October 4, 2007 (93 South Jackson Street, Seattle, Washington 98104).

Office Lease Agreement by and between Nimbus Center, LLC and the Seller, dated December 19, 2012 (9450 SW Gemini Drive, Beaverton, Oregon 97008).

Standard Industrial/Commercial Multi-Tenant Lease - Net by and between Santa Monica Center Ltd. and the Seller, dated May 27, 2008 (8605 Santa Monica Blvd., West Hollywood, California 90069).

Retail Lease by and between Flatiron Associates I and the Seller, dated May 16, 2008 (548 Market Street, San Francisco, California 94104).

Letter Agreement by and between CBRE, Inc. and the Seller, dated February 9, 2015.

Letter Agreement by and between Desh Urs and the Seller, dated October 20, 2014.

Service Contract for Development by and between Cliff Bowman and the Seller, dated November 7, 2014.

Agreements to Furnish Employees USA by and between Volt Services Group and the Seller, dated November 30, 2007.

Staffing Agreement by and between Express Services, Inc., dba Express Employment Professionals, and the Seller, dated February 20, 2009.

Terms of Service by and between CampusPoint Corporation and the Seller, undated.

Lease Agreement by and between Erving Leasing Company and the Seller, dated January 24, 2014.

Lease Agreement by and between Pacific Office Automation, Inc. and the Seller, dated May 6, 2010.

Lease Agreement by and between Pacific Office Automation, Inc. and the Seller, dated April 22, 2011.

Office Equipment Lease Contract by and between Solutions Yes and the Seller, dated August 21, 2013.

CONFIDENTIAL

API License and Development Agreement, API Naming and Advertising Restrictions and App Center Addendum by and between Bill.com and the Seller, dated December 4, 2013.

Employment Agreement by and between James Wilson and the Seller, dated September 24, 2014.

Employment Agreement by and between Stacey Lee and the Seller, dated September 24, 2014.

Customer Contracts provided to the Buyer.

Reseller Agreement by and between BServ, Inc. and the Seller, dated July 20, 2009, as amended July 9, 2010.

Services Contract for Document & Data Processing by and between iBridge LLC and the Seller, dated October 15, 2008.

Payment Processing Agreement by and between Litle & Co. and the Seller, dated November 8, 2012.

Service Order Agreement by and between XO Communications Services, LLC and the Seller, dated February 24, 2014.

Master Service Agreement by and between Atlantic Metro Communications II, Inc. and the Seller, dated April 18, 2014 (Los Angeles).

Master Service Agreement by and between Atlantic Metro Communications II, Inc. and the Seller, dated April 18, 2014 (San Francisco).

Master Service Agreement by and between Atlantic Metro Communications II, Inc. and the Seller, dated March 31, 2014 (New York).

Business Service Order Agreement by and between Comcast Cable Communications Management LLC and its operating affiliates and the Seller, dated April 17, 2014 (Beaverton).

Business Service Order Agreement by and between Comcast Cable Communications Management LLC and its operating affiliates and the Seller, dated April 17, 2014 (Seattle).

Service Agreement by and between Integra Telecom and the Seller, dated February 21, 2014.

Service Agreement by and between Time Warner Cable Enterprises LLC and the Seller, dated September 25, 2014.

Master Service Agreement by and between ViaWest, Inc. and the Seller, dated May 30, 2013.

CONFIDENTIAL

AT&T (Internet for San Francisco and Los Angeles) (contract not readily available)

Frontier (Internet for Beaverton) (contract not readily available)

Email Agreement by and between Matt Clark and the Seller, dated April 8, 2014.

Various widely-available commercial software and service contracts used by the Seller in the Business, including, but not limited to, the following:

Contracting Party	Description
Dyn DNS	DNS service
License Agreement - Shoretel	Phone system
Service Agreement - viawest	Data center
Service Agreement - Azure	Website hosting
Microsoft Office Professional Plus Licenses	Provantage
Juniper Care	Firewall & Switch Maintenance
Microsoft Visual Studio Premium with MSDN	Software development tools --- purchased through Provantage
Workstation Maintenance	Dell
Various Microsoft Perpetual Licenses	
Various Microsoft Subscription Licenses	Purchased through Provantage
Server Maintenance	Dell
Dynamic PDF Maintenance	CeTe
Message Labs	Email spam & virus filtering
Kayako Fusion	Customer support ticketing software
Kaspersky	Anti-virus software

CONFIDENTIAL

Contracting Party	Description
JIRA Maintenance	Bug tracking software
GoDaddy	Domain registration
eFax	Digital fax service
McAfee Secure	External PCI scanning
Service Agreement - Baron Messenger	Miami address
Service Agreement - Chicago Messenger	Chicago address
Service Agreement - Sunrise Delivery	Houston address
Royalty Agreement - Share a sale	Fixed amount per sign up
AACT	Alarm services
Adword Agreement - Google	
Google Analytics - Google	
Endicia	Postage
Service Agreement - Hot Shot Delivery, Inc.	Courier Service
Service Agreement - Intacct	GL software
Stamps.com	Postage
TriNet	HR services vendor
FedEx	Shipping Vendor
Jim Elliot - CPA	Tax preparation

CONFIDENTIAL**APPENDIX A****Components**

Component	Description
Desktop UI	Standard web interface for customers to access their accounts.
Mobile UI	Mobile web interface for customers to access their accounts.
CS Tools	Standard web interface for internal use by operations and customer service.
Ops Wizard	.NET client program for inventory management, scanning and shipping operations as well as some customer service tasks.
Bulk Scan Downloader	.NET client for customers to perform unattended, bulk downloading of mail from their accounts.
Downloader Tool	Experimental cross-platform .NET client for customers to perform unintended bulk downloading of mail from their accounts.
Signup	Standard web interface for customers to sign up for service.
Iris Setup	Server-side setup and configuration tool for provisioning and managing certain aspects of Iris services.
Billing Service	Server-side processes for customer billing.
Credit Card Vault	Server-side processes for credit card processing.
Check Deposit Vault	Server-side processes for electronic check deposit processing.
App Services	Server-side processes for core account functionality such as inventory and account management.
Facility Services	Server-side processes for inventory management within each facility.
Deployment Tools	Custom tools for central management and deployment of Iris

CONFIDENTIAL

	releases.
Build Tools	Custom tools for building Iris releases.
Development Tools	Custom tools for developing the Iris platform.
Static Loader	Upgrade and provisioning tool used during the release process.
Miscellaneous Tools	Miscellaneous custom tools for various tasks.
Image Server	Server-side process for handling distributed image storage and retrieval.
ID Tracker Service	Server-side process for centralized management of barcode allocations for multiple deployments of the Iris platform.

Programs

Program	Description
setup.exe	Microsoft ClickOnce installation wrapper generated as part of the build process.
DownloaderTool.exe	Tool provided to customers to download envelope images and content scans from their account.
CachePoker.exe	Management tool used to force cache updates in the production environment.
IrisServiceHost.exe	General purpose service host, the core container for all Iris services.
IrisSetup.exe	Setup tool to manage configuration of Iris services.
StaticLoader.exe	Setup tool used during the deployment of new Iris releases.
BulkScanDownloader.exe	Tool provided to customers to download envelope images and content scans from their account.
OpsWizard.exe	Operations client used by company staff to manage inventory,

CONFIDENTIAL

	process customer requests, etc.
--	---------------------------------

Databases

Database	Description
IrisIDTrackingDB	Master tracking database for item barcode allocation.
IrisPlatformDB	Primary application database, including all inventory, billing and customer details.
IrisScanOCRDB	Storage for all content scan OCR text.
IrisCheckDepositVaultDB	Check deposit vault.
IrisVaultDB	Credit card vault.
IrisFacilityDB	Facility specific cache database, one per facility.

1
2 EXHIBIT B
3 SALE PROCEDURES ORDER
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re
Earth Class Mail Corporation,
Debtor.

Case No. 15-30982-tmb11

ORDER (1) AUTHORIZING AND
SCHEDULING AN AUCTION FOR THE
SALE OF SUBSTANTIALLY ALL ASSETS
OF THE DEBTOR FREE AND CLEAR OF
LIENS AND OTHER INTERESTS, (2)
APPROVING SALE PROCEDURES, (3)
APPROVING PROCEDURES FOR
ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, (4) DIRECTING
APPOINTMENT OF CONSUMER
PRIVACY OMBUDSMAN

This matter came before the Court on April 6, 2015, on the Debtor's Motion for Orders
(1) Authorizing and Scheduling an Auction for the Sale of Substantially All Assets of the Debtor
Free and Clear of Liens and Other Interests, (2) Approving Sale Procedures, (3) Approving
Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases, (4)
Directing Appointment of Consumer Privacy Ombudsman, (5) Approving Purchase Agreement

1 or Subsequent Overbid, (6) Scheduling a Hearing to Consider Approval of the Sale, (7)
 2 Establishing the Form and Manner of Notices Related Thereto, (8) Authorizing Interim
 3 Distribution from Sale Proceeds, and (9) Requesting Waiver of the Stay Under Bankruptcy Rule
 4 6004(f) and 6006(d) filed on March 20, 2015 (Docket No. ___) (the "Motion"). The Court
 5 having held an initial hearing on the Motion on April 6, 2015, and having considered the
 6 submissions and arguments of counsel and the files and records herein, and being now fully
 7 advised in of the premises,

8 THE COURT FINDS as follows:

9 A. This Court has jurisdiction over this matter and the case of Earth Class Mail
 10 Corporation (the "Debtor"), the Motion and the parties and property affected pursuant to 28
 11 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This
 12 matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). To the extent required by law,
 13 each creditor and party in interest has acknowledged and consented to this Court's authority to
 14 enter this Sale Procedures Order as a final order of this Court, or all challenges to this Court's
 15 authority have been overruled or waived.

16 B. Findings of fact herein shall be construed as conclusions of law and conclusions
 17 of law shall be construed as findings of fact as appropriate.

18 C. The notice provided regarding the Motion constitutes sufficient and adequate
 19 notice. No further notice in connection with the entry of this Order is or shall be required.

20 D. The Sale Procedures (attached as **Exhibit 1** to this Order) were proposed by the
 21 Debtor in good faith with the goal of maximizing the value of the Purchased Assets for the
 22 benefit of all creditors of the estate and other parties-in-interest. Debtor has articulated good and
 23 sufficient reasons for authorizing and approving the Sale Procedures, which are reasonable and
 24 appropriate under the circumstances and designed to maximize the recovery on, and realizable
 25 value of, the Purchased Assets.
 26

E. Debtor's proposed Sale Notice (attached as **Exhibit 2** to this Order) is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the sale, the auction, and the assumption procedures.

F. On February 13, 2015, Debtor and Buyer entered into the Asset Purchase Agreement (the "Agreement") pursuant to which Buyer agreed to purchase the Purchased Assets, subject to the conditions set forth in the Agreement.

G. The Debtor has established and proved good and sufficient reasons for approval of the proposed sale under the terms of the Agreement, subject to the sale procedures set forth in this Order.

H. Entry of this Order is in the best interests of Debtor, its estate, creditors and other parties-in-interest.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED as set forth below.

2. All responses or objections to the relief requested in the Motion and the exhibits thereto that have not been withdrawn, waived or settled are overruled.

3. The Sale Procedures attached as **Exhibit 1** are hereby approved and shall be used in connection with the proposed sale of the Purchased Assets.¹

4. Any objections to the proposed Sale shall be in writing and filed with this Court no later than _____, **2015** at 5:00 p.m. Pacific Time. Any party filing such an objection must attend the Sale Hearing (described below) and advocate its objection at such hearing. Any objection not filed, served, and/or advocated in accordance with this paragraph may be deemed waived and may be forever barred.

¹ Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion and/or the Agreement.

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

1 5. The Auction for the Purchased Assets will be held on _____, **2015**, at 9:00
 2 a.m. Pacific Time, at the U.S. Bankruptcy Court, 1001 SW Fifth Avenue, Room No. _____,
 3 Portland, Oregon 97204. The auction will be conducted openly, and all creditors will be
 4 permitted to attend. A record will be made of bidding at the Auction.

5 6. The Sale Hearing will be conducted on _____, **2015**, at _____ a.m.
 6 Pacific Time before the Honorable Trish M. Brown in Courtroom 4 of the U.S. Bankruptcy
 7 Court, 1001 SW Fifth Avenue, 7th Floor, Portland, Oregon 97204, to consider the entry of an
 8 order providing and approving, inter alia, the following: (a) the sale or other disposition of
 9 Debtor's assets to the Successful Bidder or Bidders free and clear of all liens, claims, interests
 10 obligations, and encumbrances in accordance with 11 U.S.C. § 363(f); (b) that Successful Bidder
 11 or Bidders have not assumed any liability or obligations (except as specifically assumed by the
 12 successful bidder in the Asset Purchase Agreement signed by the respective bidder, as may be
 13 amended in a writing signed by the respective bidder or otherwise specifically provided in the
 14 Order Confirming the Plan); (c) that Successful Bidder or Bidders are not successors to Debtor;
 15 (d) that all persons who have received the Notice are bound by the order and are enjoined from
 16 pursuing Successful Bidder or Bidders to recover on any claims they may have against Debtor;
 17 and (e) that the sale agreement or agreements were entered into in good faith, without collusion,
 18 and from arms' length bargaining positions. Debtor shall be deemed to have accepted a bid and
 19 the Successful Bidder determined only when the bid for the Assets has been approved by the
 20 Court at the Sale Hearing.
 21
 22
 23

24 7. The Assumption Procedures are hereby approved as set forth below.

25 a. Notice. On or before _____, 2015, the Debtor will provide notice
 26 in the form of the Assumption and Assignment Notice attached hereto as **Exhibit 3** (the

1 “Assumption and Assignment Notice”) to each non-debtor counterparty to a Material Agreement
 2 that Purchaser designates for assumption and assignment. The Assumption and Assignment
 3 Notice shall identify the proposed amount to be paid to such counterparty to cure all defaults
 4 under such agreement that are required to be cured pursuant to section 365 of the Bankruptcy
 5 Code as a prerequisite to assumption (together with the timing of such payments, if any)(the
 6 “Cure Schedule”).
 7

8 b. Objections. Objections, if any, to the proposed assumption and assignment of any
 9 Material Agreements to Purchaser, including any objection to the cure amount set forth on the
 10 Cure Schedule or to adequate assurance of future performance, must be made in writing and filed
 11 with the Court no later than _____, 2015. (the “Objection Deadline”).
 12

13 c. Resolution of Objections. If no objection to assumption or assignment is
 14 filed by a counterparty to a Material Agreement before the Objection Deadline, the counterparty
 15 to the assumed agreement shall be deemed to consent to the assumption and assignment of such
 16 assumed agreement. If no objection to the proposed cure amount with respect to an assumed
 17 agreement, then the cure amount set forth in the Cure Schedule shall be binding upon the non-
 18 debtor party with respect to such assumed agreement for all purposes in this Chapter 11 case, and
 19 will constitute a final determination of the total cure amount required to be paid in connection
 20 with the assumption and assignment thereof. In that event, the Debtor and Purchaser may
 21 provide in the Sale Order for the assumption and assignment of the applicable Material
 22 Agreement to Purchaser (or other Successful Bidder) and for payment of the cure amount, if any,
 23 specified in the Assumption and Assignment Notice, all without further notice to that
 24 counterparty. If a timely Contract Objection is filed by the Objection Deadline and such
 25 objection cannot otherwise be resolved by the parties, the Bankruptcy Court may hear such
 26

1 objection at the Sale Hearing, or any adjourned date thereof. The pendency of a dispute relating
 2 to a proposed cure amount will not delay the closing of the sale, including the assumption and
 3 assignment of Material Agreements necessary to effectuate such closing.

4 d. Effect of Qualified Alternative Bids. If Acceptable Bids are received by
 5 the Debtor, and if Purchaser is not the Successful Bidder at the Auction, the Debtor will provide
 6 an amended assumption and assignment notice to each non-Debtor counterparty to any contracts
 7 or leases designated by the Successful Bidder for assumption and assignment. Such amended
 8 assumption and assignment notice shall identify the Successful Bidder, and shall provide
 9 information to the non-debtor counterparties regarding the ability of the Successful Bidder to
 10 provide adequate assurance of future performance as required by section 365 of the Bankruptcy
 11 Code. Objections, if any, to the proposed assumption and assignment of any contract or lease
 12 designated a Successful Bidder other than Purchaser must be made in writing and filed with the
 13 Court on a date to be fixed by the Court at the Sale Hearing.

14 e. Timing of Assignment. Each Material Agreement will be assumed and
 15 assigned to Purchaser or the Successful Bidder (as applicable) on the date (the “Assumption
 16 Effective Date”) that is the later of (i) the Proposed Assumption Effective Date, and (ii) the
 17 Assumption Resolution Date (as defined below). The “Assumption Resolution Date” shall be,
 18 (i) if no Contract Objection has been filed on or prior to the Contract Objection Deadline, the
 19 business day after the Contract Objection Deadline, or (ii) if a Contract Objection has been filed
 20 on or prior to the Contract Objection Deadline, the date of the Assumption Resolution
 21 Stipulation or the date of a Court order authorizing the assumption and assignment to Purchaser
 22 or the Successful Bidder (as applicable) of the Assumed Contract or Assumed Lease. If
 23
 24
 25
 26

Purchaser is the Successful Bidder, the Assumption Effective Date shall not be later than the Closing Date.

8. The Sale Notice in the form attached hereto as **Exhibit 2**, is hereby approved.

9. The failure of any third party to file and serve an objection as ordered and directed herein shall be deemed the consent of such a party to the sale and transfer of the Purchased Assets to Buyer or the Successful Bidder (including the assumption and assignment of the Material Agreements and the fixing of any applicable Cure Costs).

10. Unless already accomplished, the United States Trustee is directed to appoint a consumer privacy ombudsman under section 322 of the Bankruptcy Code.

11. As provided by Bankruptcy Rule 6004(h) and 6006(d), this Order shall not be stayed for 14 days after the entry thereof and shall be effective and enforceable immediately on its entry on the docket.

12. Unless otherwise specified, all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a)

###

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

MOTSCHENBACHER & BLATTNER, LLP

By: EXHIBIT

Nicholas J. Henderson, OSB No. 074027

nhenderson@portlaw.com

117 SW Taylor Street, Suite 200

Portland, OR 97204

Telephone: (503) 417-0500

Facsimile: (503) 417-0501

Proposed Attorneys for Earth Class Mail Corporation

cc: List of Interested Parties

Motschenbacher & Blattner, LLP

117 SW Taylor Street, Suite 200

Portland, OR 97204

Phone: (503) 417-0500

Fax: (503) 417-0501

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT 1
SALE PROCEDURES

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

Nicholas J. Henderson
nhenderson@portlaw.com
MOTSCHENBACHER & BLATTNER, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Telephone: (503) 417-0500
Facsimile: (503) 417-0501

Proposed Attorneys for Debtor
Earth Class Mail Corporation

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re
Earth Class Mail Corporation,
Debtor.

Case No. 15-30982-tmb11

NOTICE RE: SALE PROCEDURES FOR THE
SUBMISSION, RECEIPT AND ANALYSIS OF
BIDS IN CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF DEBTOR'S
BUSINESS ASSETS

These Sale Procedures have been approved by order of the United States Bankruptcy Court for the District of Oregon (the "Court") in connection with the above captioned bankruptcy case of Earth Class Mail Corporation (the "Debtor") (the "Sale Procedures Order").

These Sale Procedures set forth the process by which Debtor is authorized to conduct the sale (the "Sale") by auction (the "Auction") of substantially all of Debtor's business assets as more particularly described in the Agreement (defined below). These Sale Procedures also set forth the terms by which prospective bidders may qualify for and participate in the Auction, thereby competing to make the highest and/or best offer for the assets being sold.

A. Stalking Horse Bidder

On February 13, 2015 Debtor and Delivered.io, Inc. ("Delivered.io") entered into an Asset Purchase Agreement (the "Agreement") for the acquisition of all of Debtor's assets as described in the Agreement (the "Purchased Assets"). Among other things, Buyer agreed to pay a purchase price in an amount equal to \$5,000,000, plus or minus the amount by which Debtor's Closing Working Capital exceeds or is less than \$500,000 (the "Purchase Price") for the Purchased Assets, plus Reimbursement Costs defined in Section 11.1 of the Agreement, subject to the outcome of the Auction and the entry of an order of the Court (the "Sale Order") approving the sale of the Purchased Assets. A copy of the Agreement has been filed with the Court and may be obtained by contacting Christopher Sturgeon, Bankruptcy Assistant to Debtor's Counsel, at (503) 417-0511.

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

B. Participation Requirements

To participate in the bidding process and to obtain access to due diligence materials, any person interested in purchasing the Assets (an "Potential Bidder") must deliver (unless previously delivered) to both Debtor and counsel for Debtor the following (the "Preliminary Bid Documents"):

1. An executed confidentiality agreement in form and substance acceptable to Debtor and its counsel;
2. Preliminary written proof by the Potential Bidder of its financial capacity to close the proposed transaction, to pay the amounts that would be due to the Debtor at Closing, including, but not limited to, its ability to satisfy the standards to provide adequate assurance of future performance of any contracts and leases to be assumed and assigned under Section 365 of the Bankruptcy Code, which may include current unaudited or verified financial statements of, or verified financial commitments (i.e., banking or capital references) obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which must be deemed satisfactory to Debtor in its business judgment.

As soon as practicable, and in any event within two business days after a Potential Bidder delivers the Preliminary Bid Documents, Debtor shall determine and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents. Debtor shall work with Potential Bidders during the two business-day period (as it may be extended by Debtor) to attempt to correct or cure any deficiencies in any Preliminary Bid Documents. Only those Potential Bidders whose Preliminary Bid Documents have been deemed acceptable at the end of such two business-day period (as it may be extended by Debtor) (each, an "Acceptable Bidder") may conduct a due diligence review with respect to the Assets or submit bids to acquire the Assets. Delivered.io is deemed an Acceptable Bidder

C. Due Diligence Access

After receipt of an executed confidentiality agreement and notification of Acceptable Bidder status, Debtor will provide each Acceptable Bidder reasonable due diligence information, as requested as soon as reasonably practicable after such request. Debtor shall be entitled to use its business judgment in determining the extent to which an Acceptable Bidder is entitled to receive confidential competitive information.

D. Bid Requirements

Any Acceptable Bidder that is interested in being a participant in the Auction and acquiring all or substantially all of the Assets (each a "Bidder") must submit a "Bid" as provided herein prior to 5:00 p.m. Pacific Time on _____, 2015 (the "Bid Deadline"). Any such Bid must:

1. Identify the proponent of the Bid and an officer or employee who is authorized to appear, act on behalf of and bind the Bidder;
2. Identify any party for whom the Bidder may be bidding with or on behalf of, indicate whether the bidder is a party to any agreement limiting the bidders at the Auction, and identify any relation of such parties to Debtor.
3. Contain (a) a signed definitive asset purchase agreement in substantially the form of the Agreement (a "Competing Purchase Agreement") and (b) a comparison of such Competing Purchase Agreement to the Agreement, showing all the differences between the two. A Competing Purchase Agreement must:
 - i. Be in form and substance satisfactory to Debtor;
 - ii. Clearly designate the assets to be acquired (which must be all or substantially all of the Purchased Assets);
 - iii. agree that the purchase price shall be at least \$5,050,000 (i.e., \$50,000 more than the \$5,000,000 Purchase Price contained in section 2.1 of the Agreement executed by Purchaser)², plus the Break-up Fee (collectively, "Minimum Initial Overbid Amount"), and that the Break-up Fee, and the purchase price will be paid in cash, subject to the same adjustments, escrow, and other terms of the Agreement;
 - iv. be accompanied by a deposit in the form of cash, cashier's check or letter of credit issued by a federal or state chartered domestic bank in the amount of \$150,000 representing a portion of the Purchaser's Break-up Fee);
 - v. Not be subject to any (a) financing contingency; (b) contingency relating to the completion of unperformed due diligence; (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or consents; or (d) any conditions precedent to the Bidder's obligation to purchase the Assets, other than those conditions included in the Agreement; and
 - vi. Not provide for the payment to the Bidder of any Break-Up Fee, topping fee, expense reimbursement or other similar fee or arrangement.
4. be accompanied by financial information for the bidder sufficient to enable the Debtor to determine the bidder's creditworthiness and ability to close a sale of the Assets, and pay the full Break-Up Fee to Purchaser within three days after entry of the Sale Order if the bidder is the Successful Bidder, including information sufficient to demonstrate the bidder's ability to provide adequate assurance of

² The \$50,000 minimum bid increment varies from the \$10,000 bid increment set forth in Section 7.5(c) of the Agreement. The \$50,000 bid increment in this Notice controls.

Motschenbacher & Blattner, LLP
 117 SW Taylor Street, Suite 200
 Portland, OR 97204
 Phone: (503) 417-0500
 Fax: (503) 417-0501

future performance of obligations under any executory contracts or unexpired leases to be assumed and assigned to the bidder;

5. by its terms, remain open and irrevocable through the conclusion of the Sale Hearing, unless extended by agreement of the parties.
6. Be submitted to counsel for Debtor so as to be received not later than the Bid Deadline. Any Bid that meets all of the foregoing requirements, as determined by Debtor in its good faith discretion, shall be considered a "Qualified Bid." Counsel for Debtor shall, as soon as practicable, send a copy of each Qualified Bid received, if any, to the following parties: (i) counsel to the secured creditors, (ii) the United States Trustee; and (iii) counsel to each Bidder submitting a Qualified Bid (or if a Bidder does not have counsel, to the Bidder).

E. Evaluation of Qualified Bids

Prior to the Auction, Debtor shall evaluate the Qualified Bids and identify the Qualified Bid that is, in Debtor's business judgment, the highest or otherwise best bid (the "Starting Bid"). No later than 2:00 p.m. two days prior to the Auction, Debtor shall notify Delivered.io and all parties who have submitted Qualified Bids (each a "Qualified Bidder") as to whether there will be an Auction, and if so, which Qualified Bid is the Starting Bid. If any interested bidder is deemed to be "unqualified" by the Debtor and will therefore be precluded from participating in the auction, on the request to such unqualified bidder, the auction will be delayed, or if commenced, temporarily adjourned, while Debtor shall bring the issue to the Court for an immediate determination. Thereafter, the auction shall proceed with or without the participation of the affected potential bidder, in accordance with the court's ruling.

F. No Qualified Bids

If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur and Delivered.io will be deemed the Successful Bidder. Subject to the termination rights under the Agreement, Debtor will immediately pursue entry of a Sale Order by the Court approving the Purchase Agreement and authorizing the sale of the Assets to Delivered.io.

G. Auction

In the event Debtor determines that one or more Bids are Qualified Bids, then Debtor will conduct the Auction on _____, 2015 at 9:00 a.m. (the "Auction") with respect to the sale of the Purchased Assets at the U.S. Bankruptcy Court, 1001 SW Fifth Avenue, Room No. _____, Portland, Oregon 97204, or at such other location as may be designated by Debtor. The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

1. The Qualified Bidders, including Delivered.io, shall appear in person or through duly-authorized representatives at the Auction.
2. Only Qualified Bidders, including Delivered.io, shall be entitled to bid at the Auction.
3. Bidding at the Auction shall begin at the Starting Bid.

4. Subsequent bids at the Auction, including any bids by Delivered.io, shall be made in minimum increments of \$50,000 or as otherwise agreed by the Bidders or as set by the Debtor.
5. All bidding will be open, and all creditors are permitted to attend.
6. A record of bidding at the Auction will be made. Such record may be transcribed by a certified court reporter to ensure an accurate recording of the bidding at the Auction.
7. Each Qualified Bidder will be required to confirm on the record at the Auction that it has not colluded with any other person with respect to the bidding or the Sale.
8. The Auction shall be governed by such other procedures as may be announced by Debtor or its counsel from time to time at the Auction; provided that any such other procedures shall not be inconsistent with the Sale Procedures Order or any other order in Debtor's Chapter 11 case.

H. Acceptance of the Successful Bid

Upon the conclusion of the Auction (if such Auction is conducted), Debtor, in the exercise of its reasonable, good-faith business judgment, shall identify the highest or otherwise best bid (the "Successful Bid"). The Qualified Bidder having submitted the Successful Bid will be deemed the "Successful Bidder." The Successful Bidder and Debtor shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms upon which the Successful Bid was made.

Debtor will present the results of the Auction to the Court at the Sale Hearing, at which certain findings will be sought from the Court regarding the Auction, including, among other things, that (1) the Auction was conducted, and the Successful Bidder was selected, in accordance with these Sale Procedures, (2) the Auction was fair in substance and procedure, (3) the Successful Bid was a Qualified Bid, and (4) consummation of the Sale contemplated by the Successful Bid is in the best interests of Debtor and its estate.

If an Auction is held, Debtor shall be deemed to have accepted a Qualified Bid only when (1) such bid is declared the Successful Bid at the Auction or by the Court, and (2) definitive documentation has been executed in respect thereof. Such acceptance is conditioned on approval by the Court of the Successful Bid and the entry of an Order approving such Successful Bid.

I. Bankruptcy Court Approval of Sale

A hearing to consider approval of the sale to the Successful Bidder (or to approve the Purchase Agreement if no Auction is held) (the "Sale Hearing") and seek entry of a Sale Order is presently scheduled to take place at _____ a.m. on _____, 2015, Pacific Time or at such other time as is announced at the Auction by Debtor. The Sale Hearing will be held before the Honorable Trish M. Brown, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Oregon, in Courtroom No. 4 of the U.S. Bankruptcy Court,

Motschenbacher & Blattner, LLP

117 SW Taylor Street, Suite 200

Portland, OR 97204

Phone: (503) 417-0500

Fax: (503) 417-0501

1 1001 SW Fifth Avenue, 7th Floor, Portland, Oregon. Debtor and the Successful Bidder, once the
 2 Successful Bidder has been determined, shall each use their commercially reasonable efforts, and
 3 shall cooperate, assist and consult with each other, to secure the entry of a Sale Order in a form
 4 reasonably acceptable to Debtor and the Successful Bidder. Any objections to the Auction
 5 results must be filed with the Court by 5:00 p.m. Pacific Time on _____, 2015.
 6 The Sale Hearing may be continued to a later date by Debtor by sending notice to all prospective
 7 bidders prior to, or making an announcement at, the Sale Hearing. No further notice of any such
 8 continuance will be required to be provided to any party.

9 **J. Designation of Back-Up Bidder**

10 Upon the conclusion of the Auction and the selection of the Successful Bidder, Debtor
 11 shall select the person submitting the next highest or otherwise best bid (the "Back-Up Bidder").
 12 The bid of the Back-Up Bidder shall remain open until the second business day following the
 13 closing of a sale to the Successful Bidder. If for any reason the Successful Bidder is unable or
 14 unwilling to consummate an approved sale because of breach or failure to perform on the part of
 15 the Successful Bidder, the Back-Up Bidder shall be deemed to be the Successful Bidder. The
 16 purchase price shall be the amount of such Back-Up Bidder's last bid, and Debtor shall be
 17 authorized to effectuate the sale to the Back-Up Bidder without further order of the Bankruptcy
 18 Court. If, for any reason, the Back-Up Bidder fails to perform, Delivered.io agrees that if Debtor
 19 tenders full performance of all of its obligations under the Purchase Agreement to Delivered.io
 20 on or before _____, 2015, and the Purchase Agreement is not otherwise materially
 21 breached by Debtor, Delivered.io shall purchase the Purchased Assets under the terms of the
 22 Agreement.

23 **K. Reservation of Rights to Modify Sale Procedures**

24 Debtor reserves the right to modify these Sale Procedures in any manner that will best
 25 promote the goals of the bidding process and may impose, at or prior to the Auction, additional
 26 customary terms and conditions on the sale, including, without limitation, extending the
 27 deadlines set forth in these Sale Procedures, adjourning the Auction at the Auction, and/or
 28 adjourning the Sale Hearing in open court without further notice. Unless all qualified bidders
 29 agree to a change in the auction procedures, the auction procedures will not be changed absent a
 30 future Court order.

31 DATED: _____, 2015

MOTSCHENBACHER & BLATTNER, LLP

32 By: _____
 33 Nicholas J. Henderson, OSB No. 074027
 34 nhenderson@portlaw.com
 35 117 SW Taylor Street, Suite 200
 36 Portland, OR 97204
 37 Telephone: (503) 417-0500
 38 Facsimile: (503) 417-0501

39 Proposed Attorneys for Debtor
 40 Earth Class Mail Corporation

EXHIBIT 2
SALE NOTICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

Earth Class Mail Corporation,

Debtor.

Case No. 15-30982-tmb11

NOTICE OF (1) MOTION TO APPROVE SALE
OF SUBSTANTIALLY ALL OF DEBTOR'S
BUSINESS ASSETS; (2) AUCTION; (3)
BIDDING PROCEDURES; (4) SALE
HEARING; AND (5) OBJECTION
DEADLINES

PLEASE TAKE NOTICE that Earth Class Mail Corporation ("Debtor") moved for approval of the sale of all or substantially all of its business assets as more particularly described in the Asset Purchase Agreement described below (the "Purchased Assets") free and clear of all liens, claims and encumbrances to Delivered.io, Inc. ("Delivered.io"), if there are no higher and better offers from qualified bidders at an auction scheduled for _____, **2015**, commencing at 9:00 a.m.

The sale to Delivered.io is for the sum of \$5,000,000, subject to adjustment, consisting of cash at closing and, pursuant to an Asset Purchase Agreement dated February 13, 2015 (the "Agreement"), entered into between Debtor and Delivered.io. A copy of the Agreement was filed with the Court, and may also be obtained by contacting Debtor's counsel at (503) 417-0511.

Debtor believes that the sale to Delivered.io is in the best interests of the estate because the sale will maximize the amount that the Debtor, its estate and its creditors may realize for the value of the assets. Additionally, the Debtor's existing cash flow does not satisfy its debt service requirements. While the Debtor's cash flow has been consistent, the Debtor's cash flow will not increase without substantial additional capital investment, and Debtor has found that it is impossible to raise additional capital with Debtor's current equity and debt structure. Delaying a sale could seriously jeopardize the value of the Debtor's business assets.

The proposed order approving the sale provides that Delivered.io shall have no liability or responsibility for any liability or other obligation of Debtor arising under or related to the Purchased Assets other than as expressly set forth in the Agreement, and that the transfer of the Purchased Assets to Delivered.io will not subject Delivered.io or its affiliates, successors or assigns, or their respective properties, to any liability for claims against Debtor or the Purchased Assets by reason of such transfer.

PLEASE TAKE FURTHER NOTICE that, pursuant to 11 U.S.C. §§ 105 and 363, Debtor proposes to sell its assets to the Successful Bidder or Bidders and obtain an order providing and authorizing, inter alia, the following: (1) that the sale is free and clear of all Liens and Liabilities, as defined in the Agreement; (2) that the Successful Bidder or Bidders have not assumed any liability or obligation (except as specifically assumed); (3) that Successful Bidder or Bidders is not or are not successors to Debtor; (4) that all persons that have been served with this Notice are bound by the order and are enjoined from pursuing Successful Bidder or Bidders to recover on any claims they may have against Debtor; and (5) that the sale agreement or agreements were entered into in good faith, without collusion, and from arms' length bargaining positions.

PLEASE TAKE FURTHER NOTICE that the Court entered an order authorizing Debtor to hold an auction to sell the Assets free and clear of all liens, claims, encumbrances and other interests, as provided in the Purchase Agreement if an overbid is received. The auction, if one occurs, is scheduled for _____, at 9:00 a.m. Pacific Time at the U.S. Bankruptcy Court, 1001 SW Fifth Avenue, Room No. _____, Portland, Oregon 97204.

PLEASE TAKE FURTHER NOTICE that the Court entered an order approving bidding procedures in connection with the sale and the auction. A copy of the Sale Procedures can be obtained from Debtor's counsel.

PLEASE TAKE FURTHER NOTICE that competing bidders are required to submit competing bids of at least \$5,050,000, plus a Break-Up Fee of \$150,000, plus the amount of the Reimbursement Costs as defined in the Agreement, and otherwise qualify as bidders in accordance with the approved Sale Procedures prior to 5:00 p.m. Pacific Time on _____, 2015.

PLEASE TAKE FURTHER NOTICE that a hearing on the proposed sale to Delivered.io, or any higher and better bidder at the auction (the "Sale Hearing"), is scheduled to be held on _____, 2015, at _____ a.m. Pacific Time, or at such later time as may be announced at the auction by Debtor, in Courtroom 4 of the United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, 7th Floor, Portland, Oregon.

PLEASE TAKE FURTHER NOTICE that if you wish to object to the sale of the Purchased Assets, you must, on or before _____, 2015, at 5:00 p.m. Pacific Time, file a written objection to the sale with the Clerk of the Court, United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, 7th Floor, Portland, Oregon 97204.

PLEASE TAKE FURTHER NOTICE that _____, 2015, at 5:00 p.m. Pacific Time (the "Deadline") is the deadline for any party to a contract or lease (the "Material Agreements") that Debtor proposes to assume and assign to Delivered.io (or other higher and better bidder at the auction) to object to the amount Debtor asserts must be paid to cure any existing defaults under the Material Agreements (the "Cure Amounts"). The Material Agreements and the Cure Amounts proposed by the Debtor will be set forth on an Assumption and Assignment Notice mailed to parties to those executory contracts or unexpired leases on or before _____, 2015.

PLEASE TAKE FURTHER NOTICE that any party to a Material Agreement who disagrees with the Cure Amount or who objects to the assumption of its Material Agreement or to the assignment of its Material Agreement, must, on or before _____, 2015, file with the Clerk of the Court, United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, 7th Floor, Portland, Oregon 97204, a written objection stating the specific facts upon which the objection is based.

PLEASE TAKE FURTHER NOTICE that unless a timely objection is filed as to a Cure Amount listed on Exhibit 1 to the Assumption and Assignment Notice shall be binding upon the non-debtor party to such Material Agreement for all purposes in this Chapter 11 case and will constitute a final determination of the total Cure Amount required to be paid in connection with the assumption and assignment of such Material Agreement. Further, unless a timely objection is filed, no further evidence shall be required to satisfy the requirements for assumption and assignment, including, without limitation, any further evidence of adequate assurance of performance by Delivered.io or other qualified purchaser, and the non-debtor party to the Material Agreement shall be barred from objecting to the assumption and assignment of

such Material Agreement and shall be deemed to consent to the assumption and assignment of the Material Agreement.

PLEASE TAKE FURTHER NOTICE that a hearing on the Cure Amounts and Debtor's proposed assumption and assignment of the Material Agreements is scheduled to be held on _____, **2015** at _____ a.m. Pacific Time, or at such later time as may be announced at the auction by Debtor, in Courtroom 4 of the United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, 7th Floor, Portland, Oregon.

PLEASE TAKE FURTHER NOTICE that the Debtor is requesting the Court to waive the 14-day stay under Bankruptcy Rule 6006(d).

Copies of any of the pleadings or documents referenced herein may be obtained by contacting Christopher M. Sturgeon, assistant to Debtor's counsel (e-mail: csturgeon@portlaw.com; telephone: 503-417-0511).

DATED: _____, 2015

MOTSCHENBACHER & BLATTNER, LLP

By: _____
 Nicholas J. Henderson, OSB No. 074027
 nhenderson@portlaw.com
 117 SW Taylor Street, Suite 200
 Portland, OR 97204
 Telephone: (503) 417-0500
 Facsimile: (503) 417-0501

Proposed Attorneys for Debtor
 Earth Class Mail Corporation

EXHIBIT 3

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND CURE AMOUNTS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

Earth Class Mail Corporation,

Debtor.

Case No. 15-30982-tmb11

NOTICE OF ASSUMPTION AND
ASSIGNMENT OF EXECUTORY
CONTRACTS AND CURE AMOUNTS

Earth Class Mail Corporation ("Debtor") previously filed a motion for approval of the sale of all or substantially all of its assets to Delivered.io, Inc. ("Delivered.io") or such higher and better offers from qualified bidders at an auction scheduled for _____ a.m. on _____, 2015. On _____, 2015, the Court entered an Order (1) Authorizing and Scheduling an Auction for the Sale of Substantially All Assets of the Debtor Free and Clear of Liens and Other Interests, (2) Approving Sale Procedures, (3) Approving Procedures For Assumption and Assignment of Executory Contracts and Unexpired Leases, (4) Directing Appointment of Consumer Privacy Ombudsman (the "Sale Procedures Order") [Dkt. ____] in connection with the sale and the auction, including procedures for the assumption and assignment of executory contracts. A copy of the Sale Procedures Order can be obtained from Debtor's counsel.

PLEASE TAKE NOTICE that _____, 2015 at 5:00 p.m. Pacific Time (the "Deadline") is the deadline for any party to a contract or lease (the "Material Agreements") that Debtor proposes to assume and assign to Delivered.io (or other higher and better bidder at the auction) to object to the amount Debtor asserts must be paid to cure any existing defaults under the Material Agreements (the "Cure Amounts"). The list of Material Agreements and the Proposed Cure Amounts are set forth on the attached **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that any party to a Material Agreement who disagrees with the Cure Amount or who objects to the assumption of its Material Agreement or to the assignment of its Material Agreement, must, on or before _____, 2015, file with the Clerk of the Court, United States Bankruptcy Court for the District of Oregon, 1001 SW Fifth Avenue, Seventh Floor, Portland, Oregon 97204, with a copy to Debtor's counsel, a written objection stating the specific facts upon which the objection is based.

PLEASE TAKE FURTHER NOTICE that unless a timely objection is filed as to a Cure Amount listed on **Exhibit 1**, the Cure Amount listed on **Exhibit 1** shall be binding upon the non-debtor party to such Material Agreement for all purposes in this Chapter 11 case and will constitute a final determination of the total Cure Amount required to be paid in connection with the assumption and assignment of such Material Agreement. Further, unless a timely objection is filed, no further evidence shall be required to satisfy the requirements for assumption and assignment, including, without limitation, any further evidence of adequate assurance of performance by Delivered.io or other qualified purchaser, and the non-debtor party to the Material Agreement shall be barred from objecting to the assumption and assignment of such Material Agreement and shall be deemed to consent to the assumption and assignment of the Material Agreement.

Motschenbacher & Blattner, LLP

117 SW Taylor Street, Suite 200

Portland, OR 97204

Phone: (503) 417-0500

Fax: (503) 417-0501

1 **PLEASE TAKE FURTHER NOTICE** that if a timely objection is filed, a hearing on
2 the Cure Amounts and Debtor's proposed assumption and assignment of the Material
3 Agreements will be held on _____, 2015 at 11:00 a.m. Pacific Time, or at such
4 time as may be announced at that time, at the United States Bankruptcy Court for the District of
5 Oregon, Courtroom 4, 1001 SW Fifth Avenue, Seventh Floor, Portland, Oregon.

6 **PLEASE TAKE FURTHER NOTICE** that the Debtor is requesting the Court to waive
7 the 14-day stay under Bankruptcy Rule 6006(d).

8 Copies of any of the pleadings or documents referenced herein may be obtained by
9 contacting Christopher M. Sturgeon, assistant to Debtor's counsel (e-mail:
10 csturgeon@portlaw.com; telephone: 503-417-0511).

11 DATED: _____, 2015

MOTSCHENBACHER & BLATTNER, LLP

12 By: _____
13 Nicholas J. Henderson, OSB No. 074027
14 nhenderson@portlaw.com
15 117 SW Taylor Street, Suite 200
16 Portland, OR 97204
17 Telephone: (503) 417-0500
18 Facsimile: (503) 417-0501

19 Proposed Attorneys for Debtor
20 Earth Class Mail Corporation

EXHIBIT 1
LIST OF EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED

Name of Non-Debtor Counterparty	Description of Contract	Cure Amount
Microsoft Corporation	Microsoft BizSpark Startup Agreement dated 7/2012, as amended by Graduation Amendment for Microsoft BizSpark Startup Program and related End User License Agreement.	\$0.00
Prime Recognition Corporation	PrimeOCR Software License Agreement dated 2/9/15	\$0.00
iBridge LLC	Services Contract for Document & Data Processing dated 10/15/08	\$0.00
Hot Shot Delivery	Lease Agreement dated 9/20/2010 (382 NE 191 st Street, Miami, FL 33179)	\$0.00
Hot Shot Delivery	Lease Agreement dated 9/20/2010 (538 W. 21 st Street, Houston, TX 77008)	\$0.00
Hot Shot Delivery	Lease Agreement dated 9/20/2010 (1608 S. Ashland Ave., Chicago, IL 60608-2013)	\$0.00
Flynn Realty Services, LLC	License Agreement dated 10/2009 (427 N. Tatnall Street, Wilmington, DE 19801)	\$0.00
230 PAS (15 (Cliff)) L.L.C. and 230 PAS (RRPIII) LLC	Standard Form of Store Lease dated 4/2008 (228 Park Avenue South, New York, NY 10003)	\$0.00
Merrill Place LLC	Lease Agreement dated 10/4/2007 (93 South Jackson Street, Seattle, WA 98104)	\$0.00
Nimbus Center, LLC	Office Lease Agreement dated 12/19/12 (9450 SW Gemini Drive, Beaverton, OR 97008)	\$0.00

Motschenbacher & Blattner, LLP

117 SW Taylor Street, Suite 200

Portland, OR 97204

Phone: (503) 417-0500

Fax: (503) 417-0501

EXHIBIT 1 (Continued)		
LIST OF EXECUTORY CONTRACTS TO BE ASSUMED AND ASSIGNED		
Name of Non-Debtor Counterparty	Description of Contract	Cure Amount
Santa Monica Center, Ltd.	Standrd Industrial/Commercial Multi-Tenant Lease – Net dated 5/27/08 (8605 Santa Monica Blvd., West Hollywood, CA 90069)	\$0.00
Flatiron Associates I	Retail Lease dated 5/16/08, as amended by the First Amendment to Lease dated 12/2/14 (548 Market Street, San Francisco, CA 94104)	\$0.00
James Wilson	Employment Agreement dated 9/24/14	\$0.00
Stacey Lee	Employment Agreement dated 9/24/14	\$0.00

EXHIBIT C
SALE ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re
Earth Class Mail Corporation,
Debtor.

Case No. 15-30982-tmb11

ORDER (1) APPROVING SALE OF ASSETS
TO DELIVERED.IO, INC. OTHER THAN IN
THE ORDINARY COURSE OF BUSINESS
FREE AND CLEAR OF LIENS, CLAIMS,
INTERESTS AND ENCUMBRANCES; and
(2) AUTHORIZING INTERIM
DISTRIBUTION FROM SALE PROCEEDS

On April 6, 2015, the Court conducted a hearing (the “Sale Hearing”) pursuant to Debtor’s Motion for Orders Authorizing and Scheduling an Auction for the Sale of Substantially All Assets of the Debtor Free and Clear of Liens and Other Interests, (2) Approving Sale Procedures, (3) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases, (4) Directing Appointment of Consumer Privacy Ombudsman, (5) Approving Purchase Agreement or Subsequent Overbid, (6) Scheduling a Hearing to Consider Approval of the Sale, (7) Establishing the Form and Manner of Notices Related Thereto, (8)

1 Authorizing Interim Distribution of Sale Proceeds, and (9) Requesting Waiver of the Stay Under
 2 Bankruptcy Rule 6004(f) and 6006(d) filed on March 20, 2015 [Dkt No. ____] (the “Motion”)
 3 seeking approval of, among other things, bid procedures, form and manner of notice of sale,
 4 auction protocols, a break-up fee, and final approval of sale to the Successful Bidder of
 5 substantially all of the assets of Debtor’s business, including the Material Contracts to be
 6 assumed (collectively, the “Purchased Assets”), free and clear of Liens, Liabilities, claims, debts,
 7 interests or encumbrances (except for the Permitted Liens and Assumed Liabilities) in
 8 accordance with the Asset Purchase Agreement (“Agreement”) with Delivered.IO, Inc.
 9 (“Purchaser”).

10 Having considered the written submissions, arguments of counsel and evidence presented
 11 at the Sale Hearing, together with the files and records in this case; and now being fully advised
 12 and after due deliberation, the Court FINDS as follows:

13 A. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334.
 14 Venue is proper pursuant to 28 U.S.C. § 1408. This matter is a core proceeding pursuant to
 15 28 U.S.C. § 157(b)(2). To the extent required by law, each creditor and party in interest has
 16 acknowledged and consented to this Court’s authority to enter this Sale Order as a final order of
 17 this Court, or all challenges to this Court’s authority have been overruled or waived.

18 B. The statutory predicates for the sale and assignment of the Purchased Assets are
 19 §§ 105(a), 363 and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of
 20 Bankruptcy Procedure (the “Bankruptcy Rules”).
 21

22 C. Findings of fact herein shall be construed as conclusions of law and conclusions
 23 of law shall be construed as findings of fact as appropriate.
 24

25 D. On February 13, 2015, Debtor and Purchaser entered into the Agreement pursuant
 26 to which Purchaser agreed to purchase the Purchased Assets, subject to the conditions set forth in

1 the Agreement.

2 E. As evidenced by the certificates of service filed with this Court (the “Certificates
3 of Service”) [Dkt No. _____], and based on representations of the Debtor and their counsel at the
4 Sale Hearing, good, proper, timely, adequate and sufficient notice of the Motion, the Sale
5 Procedures Order [Dkt No. _____], the Notice of Sale Procedures, the Notice of Sale, and the
6 Assumption and Assignment Notice, and a reasonable opportunity to object, has been provided
7 in compliance with §§ 102(1), 363(b) and 365 of the Bankruptcy Code and Bankruptcy Rules
8 2002, 6004, 6006, 9007, 9008 and 9014, the local rules of this Court, and any other applicable
9 requirements. Debtor has served the required notices on:

11 (i) the Purchaser); (ii) the Creditors’ Committee, if any; (iii) the Secured Creditors¹; (iv)
12 all shareholders (v) all other persons or entities holding or claiming to have liens or
13 interests in any of the Purchased Assets; (vi) the Office of the United States Trustee; (vii)
14 all creditors of the Debtor; (viii) the Internal Revenue Service, the Oregon Department of
15 Revenue, and any other entity to whom any tax or other charge may be due, or owing;
16 (ix) all individuals or entities, if any, which have contacted the Debtor to express interest
17 in purchasing the Purchased Assets; (x) all individuals or entities, if any, whom the
18 Debtor believes might have an interest in purchasing the Purchased Assets; (xi) all parties
19 requesting special notice in this Chapter 11 case; and (xii) all other persons or entities
20 required to be served pursuant to orders of this Court, or known counsel for any of the
21 foregoing.
22
23

24 F. The procedural due process requirements of the United States Constitution were
25 satisfied by Debtor’s service of the documents described in Section E, above. Service of each of
26

¹ As used throughout this Order, Secured Creditors is defined in Paragraph 6 of the Motion.

Motschenbacher & Blattner, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Phone: (503) 417-0500
Fax: (503) 417-0501

1 the foregoing was good, proper, timely, adequate and sufficient under the circumstances and no
2 other or further notice of the proposed sale of the Purchased Assets is or shall be required.

3 G. After the Debtor filed the Sale/Bid Procedures Motion, the Court entered the Sale
4 Procedures Order, and approved the Sale Notice, which the Debtor served as provided in
5 paragraph E above, the Debtor either received no competitive bids, or received no competing
6 bids conforming to the Sale Procedures Order and/or any competing bid that may have been
7 received was inferior to that submitted by the Purchaser, with the result that the Purchaser
8 submitted the highest and best bid, and is entitled to be the Successful Bidder as described in the
9 Sale Procedures Order,.

11 H. All creditors with liens on the Purchased Assets were given the opportunity to
12 credit bid pursuant to §363(k) of the Bankruptcy Code and no such creditor submitted a credit
13 bid.

15 I. Prior to the Petition Date, the Debtor engaged in significant marketing efforts to
16 sell the Purchased Assets. In accordance with the procedures described in the Sale Procedures
17 Order, the Debtor exposed the Purchased Assets to potential purchasers in the most effective
18 means available under the circumstances. The Debtor has proven that its business could not
19 withstand a lengthier or more extensive marketing process, which would be costly and result in
20 undue delay, and any such process is not likely to produce a higher bid.

22 J. The Debtor is the sole and lawful owner of the Purchased Assets and following
23 the closing of the sale of the Purchased Assets to Purchaser, the Purchaser will be the sole and
24 lawful owner of the Purchased Assets. Debtor is authorized to sell the Purchased Assets free and
25 clear of all Liens, Liabilities, claims, debts, interests or encumbrances (except for the Permitted
26 Liens and Assumed Liabilities) because each entity, including the Secured Creditors holding a

1 lien or security interest in the Purchased Assets to be transferred on the Closing Date either (i)
 2 has consented to the sale; (ii) could be compelled in a legal or equitable proceeding to accept a
 3 money satisfaction of such interest; or (iii) otherwise falls within the provisions of §363(f) of the
 4 Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in §
 5 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

6
 7 K. Any and all holders of Liens, Liabilities, claims, debts, interests or encumbrances
 8 have received good, proper, and sufficient notice, and did not object to the sale pursuant to the
 9 Sale Procedures Order and the Sale Notice, and are deemed to have consented pursuant to §
 10 363(f) of the Bankruptcy Code. Moreover, The Secured Creditors have affirmatively consented
 11 to the sale, and therefore the sale complies with § 363(f)(2).

12
 13 L. The Debtor has established and proved good and sufficient reasons for approval
 14 of the proposed sale under the terms of the Agreement. The Agreement with Purchaser
 15 previously was approved by this Court in Sale Procedures Order. The relief requested in the
 16 Motion is in the best interests of the estate, its creditors and other parties in interest.

17
 18 M. The Debtor has also established and proved (i) good, sufficient, and sound
 19 business purpose and justification; (ii) the sale is in the best interest of the estate; and (iii)
 20 compelling circumstances for the sale other than in the ordinary course of business, pursuant to §
 21 363(b) of the Bankruptcy Code, in that, among other things, the immediate consummation of the
 22 sale to the Purchaser is necessary and appropriate to maximize the value of the estate; the sale
 23 will provide the means for Debtor to maximize distributions to creditors; and absent
 24 consummation of the sale, Debtor or a Chapter 7 trustee will be forced to surrender the assets to
 25 the Secured Creditors, or liquidate the assets in a piecemeal fashion, or convert this case to a case
 26 under Chapter 7, either of which would yield a lesser recovery for distribution to creditors than

1 the sale pursuant to the Agreement with the Purchaser.

2 N. The Agreement constitutes the highest or best offer for the Purchased Assets, is
 3 fair value, and constitutes reasonably equivalent and reasonable market value and fair
 4 consideration for the Purchased assets, and will provide a greater recovery for the Debtor's estate
 5 than would be provided by any other available alternative. The value of the Purchased Assets is
 6 maximized by a sale in one lot rather than in piecemeal sales. A sale of the Purchased Assets,
 7 other than free and clear as provided for in this Sale Order, would yield substantially less value
 8 for the Estate, with less certainty than provided by the sale of the Purchased Assets to Purchaser.
 9 The Debtor's determination that the Agreement constitutes the highest or best offer for the
 10 Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment.
 11

12 O. The Agreement was negotiated, proposed and entered into by the parties in good
 13 faith, from arm's-length bargaining positions and without collusion or fraud of any kind. No
 14 provision of the Agreement is in conflict with or violates this Sale Order. The Purchaser is not
 15 an "insider" or "affiliate" of the Seller as those terms are defined in the Bankruptcy Code. The
 16 Purchaser is not a mere continuation of the Debtor or its estate and there is no continuity between
 17 the Purchaser and the Debtor. The Purchaser is not holding itself out to the public as a
 18 continuation of the Debtor. The Purchaser is not a successor to the Debtor or its estate and the
 19 purchase of the Assets does not amount to a consolidation, merger, or *de facto* merger of the
 20 Purchaser and the Debtor or the bankruptcy estate, or a continuation of the Debtor or the
 21 bankruptcy estate's business. The sale of the Assets to Purchaser is not being undertaken for the
 22 purpose of escaping liability for the Debtor's debts.
 23

24 P. Neither the Purchaser nor the Seller engaged in any conduct that would prevent
 25 the application of § 363 of the Bankruptcy Code or cause the application of § 363(n) of the
 26

1 Bankruptcy Code with respect to the consummation of the transaction approved under this Sale
 2 Order. The Purchaser is a good faith purchaser under § 363(m) of the Bankruptcy Code and, as
 3 such, is entitled to all of the protections afforded thereby with respect to the transactions
 4 contemplated by the Agreement, and the provisions of § 363(n) of the Bankruptcy Code are not
 5 applicable. In the absence of a stay pending appeal, if the closing of the sale occurs at any time
 6 after entry of this Sale Order, then the Purchaser, as a purchaser in good faith of the Purchased
 7 Assets, shall be entitled to all of the protections of § 363(m) of the Bankruptcy Code if this Order
 8 or any authorization contained herein is reversed or modified on appeal.

10 Q. The Court has determined that the Debtor has the power and authority to execute
 11 and deliver the Agreement, and all other documents contemplated thereby, and to consummate
 12 the transactions contemplated by the Agreement. The Agreement and all of the transactions
 13 contemplated thereby have been duly and validly authorized by all necessary actions of the
 14 Debtor. No consents or approvals other than authorization and approval of this Court are
 15 required for the Debtor to consummate the sale.

17 R. The Purchaser would not have entered into the Agreement and would not
 18 consummate the transaction contemplated thereby, thus adversely affecting the Debtor, the
 19 Estate, and its creditors, if the Court did not enter this Sale Order and provide the Purchaser with
 20 the protections hereunder.

22 S. Time is of the essence in closing the sale of the Purchased Assets in accordance
 23 with the Agreement.

24 NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

25 1. Debtor's Motion to finally approve sale to the Purchaser, contained in the Motion,
 26 but on which ruling was previously reserved until the Sale Hearing, is GRANTED in all respects.

1 2. Any objections to entry of this Sale Order or to the relief granted herein and
 2 requested in the Motion that have not been withdrawn, waived, resolved, or settled, and all
 3 reservation of rights included therein are hereby denied and overruled on the merits with
 4 prejudice.

5 3. Pursuant to §§ 105 and 363 of the Bankruptcy Code, the Debtor is hereby
 6 authorized and directed to sell the Purchased Assets to the Purchaser in accordance with the
 7 terms of the Agreement, and is empowered and directed to fully perform under, consummate,
 8 and implement the Agreement, and to execute and deliver to Purchaser all additional instruments
 9 and documents that may be reasonably necessary or desired by Purchaser to implement the
 10 Agreement.

11 4. Pursuant to §§ 105, 363 and 365 of the Bankruptcy Code, the Purchased Assets
 12 shall be sold, assigned, transferred, and conveyed to the Purchaser in accordance with the
 13 Agreement, and such sale, assignment, transfer and conveyance shall, as of the Closing Date,
 14 constitute a legal, valid, binding and effective sale, assignment, transfer, and conveyance of all
 15 such Purchased Assets to Purchaser, and shall, pursuant to § 363(f) of the Bankruptcy Code,
 16 shall vest in the Purchaser full title in and to the Purchased Assets, as of the Closing Date, free
 17 and clear of any Liens, Liabilities, claims, debts, interests or encumbrances (except for the
 18 Permitted Liens and Assumed Liabilities) of any person or entity. All holders of any such Liens,
 19 Liabilities, claims, debts, interests or encumbrances (except for the Permitted Liens and
 20 Assumed Liabilities) are forever barred, estopped, and permanently enjoined from asserting any
 21 Liens, Liabilities, claims, debts, interests or encumbrances (except for the Permitted Liens and
 22 Assumed Liabilities) in and to the Purchased Assets.

23 5. The sale of the Purchased Assets to Purchaser pursuant to the Agreement
 24
 25
 26

1 constitutes a legal, valid, and effective transfer of the Purchased Assets, shall vest the Purchaser
 2 with all of the Debtor's right, title, and interest in and to the Purchased Assets and Purchaser
 3 shall be the sole and exclusive owner thereof in accordance with the terms of this Sale Order and
 4 the Agreement. As of the Closing, the Purchaser shall have any and all rights, claims, defenses,
 5 offsets, offsets, and recoupments held by the Debtor and the estate as to the Purchased Assets.

6
 7 6. Each federal, state, and local filing office and each Governmental Authority are
 8 directed to accept, file, and record, any and all documents and instruments necessary and
 9 appropriate to consummate the transactions contemplated by the Agreement.

10 7. All Liens, Liabilities, claims, debts, interests or encumbrances (except for the
 11 Permitted Liens and Assumed Liabilities) shall attach to the proceeds from the sale of the
 12 Purchased Assets to the same extent, priority, and validity as they attached to the Purchased
 13 Assets on the Petition Date, subject to any rights, claims, and defenses the Debtor may possess
 14 with respect thereto.

15
 16 8. Except as expressly set forth in this Sale Order, and in Section 1.4 of the
 17 Agreement, Purchaser is not assuming or becoming obligated to pay, and the Purchased Assets
 18 shall not be or become liable for or subject to, any liabilities of or to the Debtor's employees,
 19 including any liabilities related to employment practices, COBRA, equal employment
 20 opportunity, nondiscrimination, harassment, wrongful termination, breach of contract,
 21 immigration, wage and hour laws, any other state, federal or local labor and employment laws,
 22 liability under the WARN Act, salaries, vacations, sick pay, incentives, severance pay, bonus,
 23 overtime, meal period, pension profit sharing retirement and/or deferred compensation and any
 24 other compensation or benefits, which claims, if any shall be and remain the liability of the
 25 Debtor.
 26

1 9. The sale, assignment, transfer and conveyance of the Purchased Assets pursuant
 2 to this Sale Order shall not subject the Purchaser to any liability with respect to the obligations
 3 incurred in connection with, or in any way related to, Debtor or the Purchased Assets prior to the
 4 Closing Date, and except with respect to the Permitted Liens and Assumed Liabilities the
 5 Purchaser is released from any potential liability with respect to any of the Purchased Assets.
 6 All persons who have received the notices described in Section E, above, are bound by this Order
 7 and are enjoined from pursuing Purchaser to recover on any claims they may have against
 8 Debtor
 9

10 10. The transactions contemplated by the Agreement are undertaken by the Debtor
 11 and the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code.
 12 The Purchaser is not an “insider” or “affiliate” of the Seller as those terms are defined in the
 13 Bankruptcy Code. Neither the Purchaser nor the Seller engaged in any conduct that would
 14 prevent the application of § 363 of the Bankruptcy Code or cause the application of § 363(n) of
 15 the Bankruptcy Code with respect to the consummation of the transaction approved under this
 16 Sale Order. The Purchaser is a good faith purchaser under § 363(m) of the Bankruptcy Code and,
 17 as such, is entitled to all of the protections afforded thereby with respect to the transactions
 18 contemplated by the Agreement, and the provisions of § 363(n) of the Bankruptcy Code are not
 19 applicable. The consideration provided by the Purchaser for the Purchased Assets under the
 20 Agreement is the product of non-collusive, arm’s-length negotiations, and is fair and reasonable
 21 and may not be avoided under the provisions of section 363(n) of the Bankruptcy Code. In the
 22 absence of a stay pending appeal, if the closing of the sale occurs at any time after entry of this
 23 Sale Order, then the Purchaser, as a purchaser in good faith of the Purchased Assets, shall be
 24 entitled to all of the protections of § 363(m) of the Bankruptcy Code. Reversal or modification
 25
 26

Motschenbacher & Blattner, LLP
 117 SW Taylor Street, Suite 200
 Portland, OR 97204
 Phone: (503) 417-0500
 Fax: (503) 417-0501

1 on appeal of the authorization provided herein to consummate the sale shall not affect the
2 validity of the sale to the Purchaser.

3 11. Neither the Purchaser nor any person or entity acting on its behalf has become
4 obligated to pay any fee or commission to any broker, finder or intermediary for or on account of
5 the transactions contemplated by the Agreement.
6

7 12. Any holder of a Liens, Liabilities, claims, debts, interests or encumbrances (other
8 than a Permitted Lien) in any of the Purchased Assets is provided adequate protection within the
9 meaning of § 363(e) of the Bankruptcy Code, by the terms of this Sale Order, including but not
10 limited to the provisions of this Sale Order that provide for the proceeds of the sale to attach to
11 such Liens, Liabilities, claims, debts, interests or encumbrances.

12 13. Effective (a) upon payment by the Debtor of the Cure Costs; and (b) on the
13 Closing Date, each Material Contract shall be deemed assumed by the Debtor and assigned to the
14 Purchaser. The Debtor is ordered to pay the Cure Costs in the manner and within the time set
15 forth in section 1.5 of the Agreement. The requirements of sections 365(b)(1) and 365(f)(2) of
16 the Bankruptcy Code are satisfied with respect to the Material Agreements, and except as
17 expressly assumed at the closing of the purchase of the Purchased Assets, all executory contracts
18 and unexpired leases are hereby rejected. Any counterparty to a Material Agreement proposed to
19 be assumed and assigned that did not timely file and serve an objection to the assumption and
20 assignment as required by the Assumption and Assignment Notice is deemed to have consented
21 to the assumption and assignment of its Material Agreement to Purchaser and the cure of existing
22 defaults and is forever barred from objecting to the cure and from asserting any additional cure
23 or other amounts against the Debtor or Purchaser.
24

25 14. On or before the Closing Date, each of the Debtor's creditors is directed to
26

1 execute such documents and take all other actions as may be necessary, or reasonably requested
 2 by the Debtor or Purchaser to release its Liens, Liabilities, claims, debts, interests or
 3 encumbrances in the Purchased Assets, if any, as such Liens, Liabilities, claims, debts, interests
 4 or encumbrances may have been recorded or otherwise exist. The Debtor is directed to turn over
 5 to the Purchaser physical possession of all of the Purchased Assets and to cooperate with the
 6 Purchaser in transferring the Purchased Assets to Purchaser, including without limitation
 7 executing and delivering such documents as may be necessary to transfer the Intellectual
 8 Property to Purchaser. The Debtor is further directed to cooperate with Purchaser in calculating
 9 the amount of the Purchase Price Adjustments as required in section 2.2 of the Agreement, to
 10 obtain and deliver to Purchaser the Estoppel Certificates, and to otherwise fully comply with its
 11 obligations under the Agreement.
 12

13 15. Upon Closing, the Debtor is authorized to make an interim distribution from the
 14 proceeds of the Sale, to pay amounts due under the Management Carve Out Plans described in
 15 Section 6 of the Motion, to Comerica Bank to pay its claim in full, and to the remaining Secured
 16 Creditors in amounts agreed upon by the Debtor. All remaining proceeds from the Sale will be
 17 held by the Debtor for distribution to administrative and unsecured claims upon further order of
 18 the Court.
 19

20 16. No bulk sales law or any similar law of any state or other jurisdiction shall apply
 21 in any way to the transfer of the Assets to Purchaser.
 22

23 17. This Sale Order shall be effective and enforceable immediately upon entry and,
 24 notwithstanding the provisions of Bankruptcy Rules 6004 or 6006, this Sale Order shall not be
 25 stayed after the entry hereof, but shall be effective and enforceable immediately upon issuance
 26 hereof. Time is of the essence in closing the transactions referenced herein, and the Debtor and

1 the Purchaser are authorized close the sale immediately upon entry of this order, or as soon as
 2 practicable thereafter.

3 18. This Court retains jurisdiction to enforce and implement the terms and provisions
 4 of the Agreement, all amendments thereto, any waivers and consents thereunder and each of the
 5 agreements executed in connection therewith. To the extent that this Sale Order is inconsistent
 6 with any prior order or pleading with respect to the Sale Procedures Order, the terms of the Sale
 7 Order shall govern. The provisions of the Agreement and this Sale Order shall remain effective
 8 and enforceable notwithstanding the appointment of a trustee or subsequent entry of any order
 9 confirming any Chapter 11 plan or other order in this case (including any order entered after any
 10 conversion of this case under Chapter 7 of the Bankruptcy Code).
 11

12 ###

13
 14 I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).
 15

16 **Presented by:**

17 MOTSCHENBACHER & BLATTNER, LLP

18 By: EXHIBIT
 19 Nicholas J. Henderson, OSB No. 074027
 20 nhenderson@portlaw.com
 117 SW Taylor Street, Suite 200
 21 Portland, OR 97204
 Telephone: (503) 417-0500
 Facsimile: (503) 417-0501

22 Proposed Attorneys for Earth Class Mail
 Corporation

23 cc: List of Interested Parties
 24
 25
 26

EXHIBIT D
MANAGEMENT CARVEOUT PLANS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EARTH CLASS MAIL CORPORATION

MANAGEMENT CARVE-OUT PLAN

EARTH CLASS MAIL CORPORATION (the "**Company**") hereby establishes this **MANAGEMENT CARVE-OUT PLAN** (this "**Plan**") effective as of September 24, 2014 (the "**Effective Date**"). Certain capitalized terms used in this Plan have the meanings assigned to them in Section 2 below. This Plan supersedes and replaces the Management Carve-Out Plan which was approved by the Company's Board of Directors in 2009.

SECTION 1 - NATURE AND PURPOSE

1.1 Purpose. The Board has adopted this Plan to provide an incentive to certain officers, directors, employees and consultants of the Company to contribute to the performance of the Company's business prior to any sale of the business to another entity or person (the "**Buyer**"). Of course, it is uncertain whether such a sale will take place. However, in the event that such a sale does take place, this Plan will enable Participants to be rewarded for their contributions in effecting such a sale and to share in the proceeds from such sale.

1.2 Plan Benefits Unfunded. The liability of the Company to pay a Bonus Amount to any Participant or Beneficiary is based solely on the contractual obligations created by this Plan. This Plan constitutes a mere promise by the Company to pay benefits in the future. The interest of a Participant or Beneficiary in Plan benefits is an unsecured claim against the general assets of the Company. No Participant or Beneficiary has any interest in any fund or in any specific asset of the Company by reason of any amounts credited or deemed to be credited hereunder. Accordingly, Plan benefits are not secured by any trust, pledge, lien or encumbrance on any property of the Company or on the assets of any benefit trust. The Company intends that this Plan be unfunded for tax purposes and for purposes of Title I of Employee Retirement Income Security Act of 1974, as amended, if applicable.

1.3 Participation Not a Contract of Employment. This Plan is not a promise of continued employment and nothing in this Plan gives any person a right to remain in the employ of or provide services to the Company or any Buyer nor does it affect the right of the Company or Buyer to terminate the employment or services of any person at any time with or without cause and with or without advanced notice, subject to the terms of any employment agreement or independent contractor agreement that may exist between such person and the Company or the Buyer.

SECTION 2 - DEFINED TERMS

Whenever used herein, the masculine pronoun shall be deemed to include the feminine, and the singular to include the plural, unless the context clearly indicates otherwise, and the following definitions shall govern this Plan:

2.1 "Triggering Event" means a Company Transaction.

2.2 "Aggregate Transaction Consideration" means the sum of the Closing Transaction Consideration and the Contingent Transaction Consideration.

2.3 "Beneficiary" means a person designated by a Participant under Section 5.4 to receive his or her Plan benefits in the event of the Participant's death.

2.4 "Board" means the Board of Directors of the Company.

2.5 "Bonus Amount" means the portion of the Bonus Fund payable to a Participant as provided under this Plan.

2.6 "Bonus Fund" means the sum of the Closing Bonus Fund and the Contingent Bonus Fund.

2.7 "Bonus Percentage" means, for each Participant, the percentage of the Bonus Fund allocated to such Participant and set forth on the Notice of Award Form delivered to each such Participant.

2.8 "Cause" means any of the following: (a) acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of the Participant with respect to the Participant's obligations or otherwise relating to the business of Company; (b) the Participant's material breach of any employment agreement, independent contractor agreement or any other agreement between the Participant and the Company; (c) the Participant's conviction or entry of a plea of nolo contendere for fraud, misappropriation or embezzlement, or any felony or crime of moral turpitude, or any crime against Company or any of its shareholders or employees; (d) the Participant's willful neglect of duties as determined in the sole and exclusive discretion of the Board; or (e) the Participant's breach or violation of any of the Company's written policies (if such breach or violation continues following any applicable cure period in such policies) applicable to employees or consultants, as the case may be, of the Company generally.

2.9 "Closing Transaction Consideration" means the sum of (a) the net purchase price to be paid by a third party in cash (or liquid securities) in connection with the Triggering Event on the Closing Date to either the Company or to its shareholders and/or holders of Company Notes, in any case, but for the operation of this Plan; provided that such amount shall not include any debt forgiveness or cancellation of any debt of the Company in connection with the Triggering Event, any amounts payable to officers, directors or employees of the Company by the Buyer in connection with any agreement(s) not to compete or similar arrangement(s) or as salary, bonus, severance compensation or consulting fees, or any amounts payable to shareholders or the Company as Contingent Transaction Consideration; minus (b) any fees, expenses or other costs incurred by the Company or its stockholders and/or holders of Company Notes in connection with the Triggering Event (including, without limitation, legal, accounting, banking and broker fees and commissions), any indebtedness or other obligations of the Company to be discharged or otherwise satisfied upon the closing of the Triggering Event, including, without limitation, all bank debt and amounts payable to vendors, creditors or other third parties (other than, in the case of a Trigger Event constituting a sale of Company Notes, amounts payable in respect of such Company Notes), and any other costs that may be related to the wind-down the Company, if applicable. In the case of a Triggering Event constituting a sale

of assets, Closing Transaction Consideration shall only be taken into account to the extent that such Closing Transaction Consideration is or will be distributed to the Company's shareholders and holders of the Company Notes in connection with such Triggering Event. In the case of a Triggering Event constituting a sale of Company Notes, Closing Transaction Consideration shall only be taken into account to the extent that such Closing Transaction Consideration is or will be distributed to holders of Company Notes in connection with such Triggering Event.

2.10 "Closing Bonus Amount" means the portion of the Closing Bonus Fund payable to a Participant as provided under this Plan.

2.11 "Closing Bonus Fund" means the aggregate amount that has been designated by the Company for payment under this Plan pursuant to Section 4.1(a).

2.12 "Closing Date" means the date on which the closing of the Triggering Event is determined pursuant to the agreements providing for such event.

2.13 "Company Notes" mean the Convertible Notes and the Secured Notes.

2.14 "Common Stock" means the common stock of the Company.

2.15 "Company Transaction" means (a) a sale of all or substantially all of the assets or stock of the Company, (b) the acquisition of the Company by means of merger, share exchange or other form of corporate combination or reorganization (other than a reincorporation for the purpose of changing the corporation's domicile in which the corporation's ownership does not change) as a result of which the shareholders of the Company immediately prior to the transaction hold less than fifty percent (50%) of the aggregate outstanding capital stock or voting power of the surviving or resulting entity (on an as-converted basis), or (c) a sale of at least fifty percent (50%) of the aggregate outstanding original principal amount of the Company's Secured Notes and/or Convertible Notes. The Plan Administrator shall have the right to determine whether multiple sales or exchanges of the securities or promissory notes of the Company or multiple Triggering Events are related, and its determination shall be final, binding and conclusive. For the avoidance of doubt, regular payments of principal and/or interest on Company Notes will not be taken into consideration for purposes of determining whether a Company Transaction has occurred, nor will regular principal or interest payments on any indebtedness which are discharged or forgiven be included for purposes of calculating Closing Transaction Consideration or Contingent Transaction Consideration.

2.16 "Contingent Transaction Consideration" means the fair market value of all cash and other consideration paid after the Closing Date to the shareholders and/or holders of Company Notes in respect of an Triggering Event, such as following the expiration of an indemnification or holdback period or in connection with an earn-out, , in each case but for the operation of this Plan; provided, however, that in calculating Contingent Transaction Consideration, (i) any amounts payable (A) to officers, directors or employees of the Company by the Buyer in connection with any agreement(s) not to compete or similar arrangement(s) or as salary, bonus, severance compensation or consulting fees, or (B) to creditors (other than in respect of any Company Notes) or other third parties, shall be specifically excluded, and (ii) the value of any non-cash consideration subject to such contingencies or earn-out will be valued as

of the date such consideration is actually distributed to the Company or its shareholders and/or holders of Company Notes, as the case may be. In the case of a Triggering Event constituting a sale of assets, Contingent Transaction Consideration shall only be taken into account to the extent that such Contingent Transaction Consideration is or will be distributed to the Company's shareholders and holders of the Company Notes in connection with such Triggering Event. In the case of a Triggering Event constituting a sale of Company Notes, Closing Transaction Consideration shall only be taken into account to the extent that such Closing Transaction Consideration is or will be distributed to the holders of Company Notes in connection with such Triggering Event.

2.17 "Contingent Bonus Amount" means the portion of the Contingent Bonus Fund payable to a Participant as provided under this Plan.

2.18 "Contingent Bonus Fund" means the aggregate amount that has been designated by the Company for payment under this Plan pursuant to Section 4.2(a).

2.19 "Convertible Notes" mean the Convertible Subordinated Promissory Notes issued by the Company pursuant to the terms of the Note and Warrant Purchase Agreement dated as of May 9, 2008, as amended, in the aggregate original principal amount of \$5,052,485.

2.20 "Executives" means all executive officers of the Company, as well as any other employees deemed key employees by the board of directors of the Company.

2.21 "Notice of Award Form" means the form attached hereto as Exhibit A, on which an eligible individual is notified of his/her participation in this Plan.

2.22 "Participants" means all Executives, and such other individuals as may be designated by the Board, in its sole discretion, as eligible to participate in this Plan, who meet the eligibility requirements set forth in Section 3.1.

2.23 "Participant Transaction Consideration" means the amount equal to the fair market value of the portion of the Aggregate Transaction Consideration distributable to a Participant in respect of (a) the shares of Common Stock then held by such Participant that were issued upon exercise of an Option or granted to such Participant in connection with such Participant's employment or consulting arrangement with the Company, (b) the vested Options then held by such Participant less the aggregate exercise price that such Participant would have to pay to purchase such shares of Common Stock and (c) any other consideration payable to such Participant pursuant to an employment agreement, independent contractor agreement or otherwise in connection with the Triggering Event (other than pursuant to this Plan).

2.24 "Plan" means this Management Carve-Out Plan, as amended from time to time.

2.25 "Plan Administrator" means the Board, or any committee designated by the Board to act as the Plan Administrator; provided that any committee designated by the Board shall include Jonathan Roberts, in his capacity as the Executive Chairman of the Company.

2.26 "Secured Notes" mean the Subordinated Secured Promissory Notes issued by the Company pursuant to the terms of the Secured Credit Facility Agreement dated as of March 3, 2010, in the aggregate original principal amount of \$2,774,915.

SECTION 3 - ELIGIBILITY

3.1 Eligibility Requirements. Subject to Section 4.3 below, an individual shall be eligible to participate in this Plan if he or she is (a) an employee, director or consultant of the Company in good standing on the Closing Date, or (b) an employee, director or consultant whose service was terminated during the ninety (90) calendar days prior to such Closing Date as a result of his or her death or permanent disability or by the Company for a reason other than Cause.

3.2 Benefits Subject to Forfeiture. Except as otherwise (a) set forth herein, or (b) determined by the Board and provided in writing to such Participant, termination of a Participant's employment or services with the Company either by the Company or by the Participant for any reason at any time more than 90 days prior to the Closing Date shall automatically result in the termination of such Participant's rights to any and all payments of Bonus Amounts. Additionally, any Participant may voluntarily forfeit all or any portion of such Participant's right to receive payments of the Bonus Amount to which such Participant otherwise would have been entitled under this Plan by delivery of written notice of such forfeiture to the Company.

SECTION 4 - AWARDS UNDER THE PLAN

4.1 Closing Bonus Fund Payments

(a) **Closing Bonus Fund.** The Closing Bonus Fund with respect to any applicable Triggering Event shall be equal to in the case of a Company Transaction, 10% of the initial \$2,774,915 of Closing Transaction Consideration and 16% of any Closing Transaction Consideration in excess thereof payable in respect of such Company Transaction.

(b) **Closing Bonus Amount.** Effective as of the Closing Date with respect to any Triggering Event, each Participant shall be entitled to receive his or her Closing Bonus Amount, which shall be the amount equal to such Participant's Bonus Percentage with respect to such Triggering Event multiplied by the Closing Bonus Fund less the Participant Transaction Consideration payable to such Participant at such time. For purposes of clarification, if a Participant's Participant Transaction Consideration is greater than his or her Closing Bonus Amount, such Participant will not be eligible to receive any Closing Bonus Amount and no Closing Bonus Amount shall be distributed to such Participant.

4.2 Contingent Bonus Fund Payments

(a) **Contingent Bonus Fund.** The Contingent Bonus Fund with respect to any applicable Triggering Event shall be equal to in the case of a Company Transaction, 10% of the initial (i) \$2,774,915 of Closing Transaction Consideration minus (ii) the amount paid into the Closing Bonus Fund (provided that such amount shall not be less than zero) and 16% of any Closing Transaction Consideration in excess thereof payable in respect of such Company Transaction.

(b) **Contingent Bonus Amount.** Effective as of the date the Contingent Transaction Consideration is actually distributed to the Company or the Company's shareholders, as the case may be, each Participant shall be entitled to receive his or her Contingent Bonus Amount, which shall be the amount equal to such Participant's Bonus Percentage with respect to the Triggering Event giving rise to such Contingent Transaction Consideration multiplied by the Contingent Bonus Fund less the Participant Transaction Consideration payable to such Participant, if any, to the extent such Participant Transaction Consideration has not been fully offset against any Closing Bonus Amount or prior Contingent Bonus Amounts otherwise payable to such Participant. For purposes of clarification, if a Participant's Participant Transaction Consideration payable at the time of payment of the Contingent Bonus Amount is greater than his or her Contingent Bonus Amount, such Participant will not be eligible to receive any Contingent Bonus Amount and no Contingent Bonus Amount shall be distributed to such Participant. Notwithstanding the foregoing, in the event an Triggering Event does not constitute a change in ownership of the Company or a substantial portion of the Company's assets within the meaning of Treasury Regulations Section 1.409A-3(i)(5) or the Board determines that the special rules under Treasury Regulations Section 1.409A-3(i)(5)(iv) for certain delayed payments pursuant to a change in control event otherwise do not apply, the Board shall, using good faith and reasonable methods, determine the value of any Contingent Transaction Consideration that could otherwise be included in the Aggregate Transaction Consideration. An amount equal to such value shall be included in the Aggregate Transaction Consideration as of the date of the Transaction Event (and any Bonus Amount which has been calculated to include such value in the Aggregate Transaction Consideration shall be paid pursuant to the terms hereof within five (5) days of such Transaction Event), and no Contingent Transaction Consideration that is actually received by the Company or the Company's shareholders, as the case may be, shall be included in the Aggregate Transaction Consideration. All determinations necessary under this Section 4.2(b) by the Board may be based on such tax and financial advice as the Board considers appropriate, in its reasonable discretion.

4.3 Plan Administrator's Discretion. The determination of the Aggregate Transaction Consideration, Participant Transaction Consideration, Bonus Fund, Bonus Amount, and all determinations necessary therefore, and the resolution of any issues that arise under this Plan shall be made by the Plan Administrator in its sole and absolute discretion and all such determinations shall be binding on all Participants.

SECTION 5 - PAYMENTS UNDER THE PLAN

5.1 Payment Schedule. Subject to Section 5.3 below, payments of Bonus Amounts under this Plan shall be made in one or more installments at the same time and in the same proportion that the Aggregate Transaction Consideration is paid to the Company and/or the shareholders of the Company in connection with the Triggering Event.

5.2 Form of Payment; Release of Claims. Any payment obligations made hereunder shall be comprised of the same type of consideration provided to the Company's shareholders in the Triggering Event. With respect to any payment obligations satisfied by the transfer to a Participant of non-cash consideration, the value of such consideration shall be determined by the Board in its sole discretion; provided, however, that the value of any non-cash consideration paid as part of the Contingent Transaction Consideration will be calculated as set

forth in the definition above. Any restrictions on delivery of or subsequent transfer of such consideration imposed by the Buyer on the Company or its shareholders shall likewise apply to Participants, and the Company may retain custody of the consideration as Participants' agent until such restrictions on delivery or transfer, as applicable, no longer apply. Participants shall execute and deliver upon request such acknowledgments as the issuer of such consideration may reasonably request to evidence Participants' obligations to comply with such restrictions. If a Participant fails to do so within a reasonable time after the Company's or issuer's written request, such Participant shall forfeit his or her rights to such portion of the Bonus Funds represented by such consideration. Prior to making any payment or distribution to a Participant pursuant to the terms of this Plan, the Company may require such Participant to execute a waiver and release of claims against the Company and its officers, directors, employees, shareholders, agents, affiliates, successors and assigns in such form as the Company may determine.

5.3 Restricted Securities. Notwithstanding anything contained in this Agreement to the contrary, if a Participant's Bonus Amount consists of common stock or other securities that are not issued to the Participants pursuant to a registration statement declared or ordered "effective" under the Securities Act of 1933, as amended, then, provided the Company reasonably anticipates that payment of the Bonus Amount would violate applicable securities laws, the Company may defer the distribution to such Participant of the amounts otherwise payable hereunder until such time as, in the reasonable good faith determination of the Board, such stock can be delivered to such Participant without violation of applicable securities laws.

5.4 Payment to a Beneficiary. If a Participant dies before receiving all benefits to which the Participant is entitled under this Plan, the deceased Participant's benefits under this Plan shall be paid or issued to the Participant's Beneficiary at the time and in the amount provided under this Plan as if the Participant had not died. A Participant shall, on a form furnished by the Company, designate one or more death Beneficiaries. A Beneficiary designation will be effective only when a signed and dated beneficiary designation form has been filed with the Company. If a Participant is not survived by any Beneficiary, the Company shall distribute the Participant's benefits under this Plan to the legal representative of the estate of the deceased Participant.

5.5 Effect of Forfeiture On Benefits for Remaining Participants. Notwithstanding any reduction or forfeiture of Bonus Amounts payable to any Participant or termination of any Participant's rights hereunder, such reduction, forfeiture or termination will not affect the amount of Bonus Amounts that other (*i.e.*, non-forfeiting or terminating) Participants will receive hereunder.

5.6 Claw Back. To the extent consideration from the Triggering Event is not withheld but remains subject to indemnification or offset claims, each recipient of a portion of the Bonus Fund shall be obligated to refund his or her pro-rata portion of any amounts that are paid on account of such indemnification or offset. For example, if the aggregate consideration received by the Company shareholders in a transaction would be \$2,000,000 and the aggregate amount of the indemnity payment is \$200,000 (*i.e.*, 10%), each recipient of a portion of the Bonus Amounts would also be obligated to refund 10% of his or her respective Bonus Amount. Notwithstanding anything to the contrary in this Section 5.6, for all tax purposes, the Company

intends to treat each recipient of a Bonus Amount as having received the full amount of the Bonus Amount at the time of receipt.

5.7 Tax Withholding. Payments under this Plan are subject to applicable federal and state withholding taxes, FICA and similar charges, and the Company may deduct the amount thereof from any payments required hereunder. Nevertheless, Participants remain ultimately responsible for the payment of any and all taxes applicable to income a Participant may receive or be deemed to have received hereunder. At the Company's discretion, the amount required to be withheld may be withheld in cash from such wages, or otherwise as the Plan Administrator or Board may reasonably determine. By execution of a Notice of Award Form, each Participant agrees, as a condition to participation in this Plan, that, if a Participant's Bonus is payable in non-cash assets, the Company may, in its discretion, withhold an amount from the Participant's share of the Bonus sufficient to satisfy the Company's withholding obligation or require the payment in cash of the amount of the Participant's withholding obligation (as determined in the good faith judgment of the Board).

5.8 No Tax Representations. Notwithstanding any provision of this Plan to the contrary, none of the Company, the Plan Administrator or the Board makes any representations or warranties to any Participant with respect to any tax, economic or legal consequences of this Plan or any payments to any Participant hereunder, including, without limitation, under Sections 280G or 409A of the Code, or other Code provisions. Each Participant, by agreeing to be bound by the terms of this Plan and executing and delivering a Notice of Award Form, shall be deemed to have waived any claim against the Company and the Board with respect to any such tax, economic or legal consequences.

5.9 Section 409A. The Company intends that the Plan and the benefits provided hereunder be exempt from or comply with the requirements of Section 409A of the Code to the maximum extent possible, whether pursuant to the short-term deferral exception described in Treasury Regulation Section 1.409A-1(b)(4) or otherwise. To the extent Section 409A of the Code is or may be applicable to the Plan and the benefits provided hereunder, the Company intends that the Plan comply with the deferral, payout and other limitations and restrictions imposed under Section 409A of the Code, including, without limitation, the change in control event provisions of Treasury Regulation Section 1.409A-3(i)(5)(iv). Notwithstanding any provision in the Plan to the contrary, the Plan shall be interpreted, operated and administered in a manner consistent with such intentions.

5.10 Payment Obligation. Bonus Amounts shall be paid by the Company except where the Buyer agrees to make all payments required hereby and assume all obligations of the Company under this Plan.

SECTION 6 - ADMINISTRATION

6.1 Plan Administration. Except as otherwise specifically set forth in this Plan, the Board has full discretionary power and authority to (a) construe and interpret this Plan and awards granted hereunder, to establish, amend and rescind such rules and regulations as it may deem appropriate for the proper administration of this Plan; (b) determine in each case the terms and provisions which shall apply to a particular award grant, including, without limitation,

eligibility for benefits and amount of benefits; (c) correct any defect, supply any omission or reconcile any inconsistency in this Plan or award grant in the manner and to the extent they shall, in their discretion, consider expedient; and (d) make all other determinations which are necessary or desirable for the proper administration of this Plan. The Board may, from time to time, delegate any right, power or duty with respect to the operation and administration of the Plan to one or more committees or individuals.

6.2 Decisions of the Board. Decisions of the Board made in good faith upon any matter within the scope of its authority shall be final, conclusive and binding upon all persons, including Participants and their legal representatives or Beneficiaries.

SECTION 7 - AMENDMENT AND TERMINATION

7.1 Plan Amendment. The Board may amend this Plan at any time in its sole discretion. Any amendment must be made in writing; no oral amendment will be effective.

7.2 Plan Termination. The Board may terminate or amend this Plan at any time. No termination or amendment of the Plan shall adversely affect any Participant in any material respect without the consent of the Participant, unless such termination or amendment affects all Participants in the same or substantially similar manner, in which case such termination or amendment shall require the consent of Participants holding at least a majority of the then granted Bonus Percentages, or is required or necessary to comply with applicable law, regulation or rule, in which case no consent shall be required. This Plan will terminate automatically upon the earliest of (a) the closing of the Company's initial public offering of shares of Common Stock pursuant to a registration statement filed under the Securities Act of 1933, as amended, (b) upon the closing of any Company Transaction, provided that this Plan will continue with respect to any Bonus Amounts payable in respect of such Company Transaction for a period of 30 days following the date that all Bonus Amounts in respect of such Company Transaction have been distributed under this Plan, or (c) dissolution of the Company or cessation of its operations.

SECTION 8 - MISCELLANEOUS

8.1 No Liability. No member of the Board and no officer or employee of the Company shall be liable to any person for any action taken or omitted in connection with the administration of this Plan unless attributable to such person's own fraud or willful misconduct; nor shall the Company be liable to any person for any such action unless attributable to fraud or willful misconduct on the part of a director, officer or employee of the Company.

8.2 No Trust. Nothing contained in this Plan and no action taken pursuant to the provisions of any related agreements shall create or be construed to create a trust of any kind. No property which may be acquired or invested by the Company in connection with this Plan shall be deemed to be security for the obligations to participants hereunder, but shall be, and continue for all purposes to be, a part of the general funds of the Company. The right of Participants to receive payment from the Company under this Plan shall be no greater than the right of any unsecured general creditor of the Company.

8.3 Discharge. The payment of any Bonus Amount under this Plan to a Participant or Beneficiary shall fully and completely discharge the Company from all further obligations under this Plan and the Notice of Award Form with respect to the Participant and Beneficiary.

8.4 Plan Benefits are not Assignable. Except as provided in Section 5.4, the rights of a Participant to Plan benefits are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Participant or Beneficiary, and any attempt to assign, pledge or encumber that interest shall be void.

8.5 Attorneys' Fees. If the Company, any Participant, any Beneficiary, and/or a successor in interest to any of the foregoing, brings legal action to enforce any of the provisions of this Plan, the prevailing party in such legal action shall be reimbursed by the other party, the prevailing party's costs of such legal action including, without limitation, reasonable fees of attorneys, accountants and similar advisors and expert witnesses.

8.6 Successors and Assigns. The terms and conditions of this Plan shall inure to the benefit of and bind the Company and the Participants, and their successors, assigns and personal representatives.

8.7 No Third Party Beneficiaries. Except as specifically provided herein, this Plan is not intended to confer upon any person, other than the Company, the Participants, the Beneficiaries and their respective successors and permitted assigns, any rights or remedies hereunder.

8.8 Confidentiality. This Plan is a special compensation program adopted by the Board solely for the benefit of certain employees, directors and agents of the Company who are designated as being eligible to participate in the Plan. Each Participant and Beneficiary has an affirmative obligation to maintain the confidentiality of the terms and conditions this Plan and of his or her participation in this Plan, including the fact of his or her participation in this Plan and his or her bonus allocation amount, except where disclosure is necessary on a "need-to-know" basis to the participant's spouse, attorney and tax or financial advisor, or others with a need to know, who, in turn, shall be advised by such participant that they may not disclose or communicate the terms and conditions of the participant's participation in this Plan.

8.9 No Vested Rights. Except as otherwise provided herein or in a Participant's Notice of Award Form, no individual shall have a vested right to any benefit or payment under this Plan until the occurrence of a Triggering Event.

8.10 Entire Agreement. This Plan constitutes the entire understanding and agreement with respect to the subject matter contained herein, and there are no agreements, understandings, restrictions, representations or warranties among any Participant and the Company other than those as set forth or provided for herein.

8.11 Governing Law. This Plan constitutes an agreement, and any disputes arising under this Agreement will be governed by and construed in accordance with the laws of the state of Washington, without giving effect to any conflict of laws principle to the contrary. Venue for any dispute arising under this Agreement will lie exclusively in the state or federal courts located

in Portland, Oregon, and any Participant or Beneficiary irrevocably waives any right to raise forum non conveniens or any other argument that Oregon is not the proper venue and hereby irrevocably consents to personal jurisdiction in the state and federal courts of the State of Oregon.

8.12 Section Headings. The headings contained in this document are for reference purposes only, and shall not affect the meaning or interpretation thereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, this MANAGEMENT CARVE-OUT PLAN has been executed effective as of the date first written above.

EARTH CLASS MAIL CORPORATION

By: _____
STACEY L. LEE
SECRETARY

EXHIBIT A

EARTH CLASS MAIL CORPORATION

MANAGEMENT CARVE-OUT PLAN

NOTICE OF AWARD FORM

Effective as of _____, 201__, _____ (the "**Participant**") has been granted the following Bonus Percentage pursuant to the Earth Class Mail Corporation (the "**Company**") Management Carve-Out Plan (the "**Plan**"):

The Participant's Bonus Percentage for purposes of determining the Participant's Bonus Amount attributable to a Company Transaction shall be:

Company Transaction Bonus Percentage: _____%

By their signatures below, the Company and the Participant agree that the Bonus Percentage and any Bonus Amounts are governed by this Notice and by the provisions of the Plan, a copy of which is attached to and made a part of this document. The Participant acknowledges receipt of a copy of the Plan, represents that the Participant has read and is familiar with its provisions.

EARTH CLASS MAIL CORPORATION PARTICIPANT

By: _____
Name: _____
Title: _____

Signature

Print Name

Address: _____

Date: _____

ATTACHMENT: Management Carve-Out Plan.

EARTH CLASS MAIL CORPORATION

MANAGEMENT CARVE-OUT PLAN

NOTICE OF AWARD

Effective as of September 24, 2014, JAMES WILSON (the "**Participant**") has been granted the following Bonus Percentage pursuant to the Earth Class Mail Corporation (the "**Company**") Management Carve-Out Plan (the "**Plan**"):

The Participant's Bonus Percentage for purposes of determining the Participant's Bonus Amount attributable to a Company Transaction shall be:

Company Transaction Bonus Percentage: 45%. This is equivalent to 4.5% of the initial \$2,774,915 (\$124,871) of Closing Transaction Consideration and 7.2% of any Closing Transaction Consideration in excess thereof payable in respect of such Company Transaction.

By their signatures below, the Company and the Participant agree that the Bonus Percentage and any Bonus Amounts are governed by this Notice and by the provisions of the Plan, a copy of which is attached to and made a part of this document. The Participant acknowledges receipt of a copy of the Plan, represents that the Participant has read and is familiar with its provisions.

EARTH CLASS MAIL CORPORATION PARTICIPANT

By: _____
STACEY LEE
CFO

Signature

James L. Wilson

Address:

Date:

ATTACHMENT: Management Carve-Out Plan.

EARTH CLASS MAIL CORPORATION

MANAGEMENT CARVE-OUT PLAN

NOTICE OF AWARD

Effective as of September 24, 2014, STACEY LEE (the "**Participant**") has been granted the following Bonus Percentage pursuant to the Earth Class Mail Corporation (the "**Company**") Management Carve-Out Plan (the "**Plan**");

The Participant's Bonus Percentage for purposes of determining the Participant's Bonus Amount attributable to a Company Transaction shall be:

Company Transaction Bonus Percentage: 45%. This is equivalent to 4.5% (\$124,871) of the initial \$2,774,915 of Closing Transaction Consideration and 7.2% of any Closing Transaction Consideration in excess thereof payable in respect of such Company Transaction.

By their signatures below, the Company and the Participant agree that the Bonus Percentage and any Bonus Amounts are governed by this Notice and by the provisions of the Plan, a copy of which is attached to and made a part of this document. The Participant acknowledges receipt of a copy of the Plan, represents that the Participant has read and is familiar with its provisions.

EARTH CLASS MAIL CORPORATION PARTICIPANT

By: _____
JAMES L. WILSON
PRESIDENT, CEO

Signature

Stacey L. Lee

Address:

Date:

ATTACHMENT: Management Carve-Out Plan.

EARTH CLASS MAIL CORPORATION

MANAGEMENT CARVE-OUT PLAN

NOTICE OF AWARD

Effective as of September 24, 2014, CHARLES M. CLAY (the "**Participant**") has been granted the following Bonus Percentage pursuant to the Earth Class Mail Corporation (the "**Company**") Management Carve-Out Plan (the "**Plan**"):

The Participant's Bonus Percentage for purposes of determining the Participant's Bonus Amount attributable to a Company Transaction shall be:

Company Transaction Bonus Percentage: 5%. This is equivalent to .5% of the initial \$2,774,915 (\$13,875) of Closing Transaction Consideration and .8% of any Closing Transaction Consideration in excess thereof payable in respect of such Company Transaction.

By their signatures below, the Company and the Participant agree that the Bonus Percentage and any Bonus Amounts are governed by this Notice and by the provisions of the Plan, a copy of which is attached to and made a part of this document. The Participant acknowledges receipt of a copy of the Plan, represents that the Participant has read and is familiar with its provisions.

EARTH CLASS MAIL CORPORATION PARTICIPANT

By: _____
JAMES L. WILSON
PRESIDENT, CEO

Signature

Charles M. Clay

Address:

Date:

ATTACHMENT: Management Carve-Out Plan.

EARTH CLASS MAIL CORPORATION

MANAGEMENT CARVE-OUT PLAN

NOTICE OF AWARD

Effective as of September 24, 2014, DAVID SMITH (the "**Participant**") has been granted the following Bonus Percentage pursuant to the Earth Class Mail Corporation (the "**Company**") Management Carve-Out Plan (the "**Plan**"):

The Participant's Bonus Percentage for purposes of determining the Participant's Bonus Amount attributable to a Company Transaction shall be:

Company Transaction Bonus Percentage: 5%. This is equivalent to .5% of the initial \$2,774,915 (\$13,875) of Closing Transaction Consideration and .8% of any Closing Transaction Consideration in excess thereof payable in respect of such Company Transaction.

By their signatures below, the Company and the Participant agree that the Bonus Percentage and any Bonus Amounts are governed by this Notice and by the provisions of the Plan, a copy of which is attached to and made a part of this document. The Participant acknowledges receipt of a copy of the Plan, represents that the Participant has read and is familiar with its provisions.

EARTH CLASS MAIL CORPORATION PARTICIPANT

By: _____
JAMES L. WILSON
PRESIDENT, CEO

Signature

David D. Smith

Address:

Date:

ATTACHMENT: Management Carve-Out Plan.